Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM 1994

SALVATORE MORETTI,
Petitioner
vs.

LOUIS J. DINICE, AND
TIMOTHY J. SULLIVAN,
Respondents

ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED
STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

# PETITIONER'S BRIEF AND APPENDIX

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April 25, 1995

## QUESTIONS PRESENTED FOR REVIEW

1. Does the decision by the trial court below which alleges the defendants are protected by absolute immunity comport with the legislative mandate set forth at N. J. Stat. Ann. 2A: 1B-1 et seq. which creates a statutory scheme for the removal of judges of inferior courts, including magistrates?

2. Do the actions by Dinice and Sullivan under the N. J. Supreme Court's case law dealing with removal of judges [(e.g. the holding of In re Yengo, 72 N.J. 425 (1977) which prescribes removal due to repeated abuse of power, disrespect for the law, deprivation of defendant's constitutional rights, abuse of contempt power, and arbitrary bail.] state a cause of action under the Federal Civil Rights Laws, 42 U.S.C. Section 1983, and under the constitutional protections afforded under the United States Constution.

3. Does the increase of water costs from $854 to $9,500 per year and the shut-off of water by Dinice, with the consequent constructive eviction of Stedtler and her ensuing arrest and imprisonment by Sullivan result in a cause of action in tort against the defendants within?

4. Does the series of ethics violations by the defendants constitute tortious interference with the rights of the petitioner resulting in damages, given the criteria set forth in the state constitution as interpreted by the New Jersey Supreme Court in their case law dealing with removal from judicial office due to involvement in political activity.

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## JUDGMENTS SOUGHT TO BE REVIEWED

1. Judgment by the United States Court of Appeals for the Third Circuit, C. A. No. 93-5581, affirming the judgment of the U. S. District Court entered September 14, 1993 in the case of Salvatore Moretti v. Louis J. Dinice, and Timothy J. Sullivan [App. 2.]

2. Order by Hon. John C. Lifland, U. S. District Judge of the District of New Jersey dismissing the complaint as to Judge Timothy J. Sullivan on August 4, 1993. [App. 3-8].

3. Order by Hon. John C. Liflaand, U. S. District Judge of the District of New Jersey dismissing the Complaint as to Judge Louis J. Dinice on September 13, 1993. [App. 9-15].

4. Order by Hon. John C. Lifland imposing sanctions of $1,613.64 as to Dinice on October 19, 1993. [App. 16-17].

5. Order by Hon. John C. Lifland imposing sanctions of $2,780.50 as to Judge Sullivan on October 26, 1993. [App. 18-19].

## JURISDICTIONAL STATEMENT

Petitioner Salvatore Moretti seeks review in the Supreme Court of the United States of his complaint wnder the jurisdiction of the Civil Rights Laws, namely 42 U.S.C. Sections 1981, 1982, 1983, 1985 and due process violations of federal constitutional rights protected by the fourth amendment - search warrants, the

sixth amendment - right to counsel, confrontation of witnesses, compulsory process, the seventh amendment - trial by jury, the eighth amendment - excessive bail, and the fourteenth amendment - due process and equal protection.

Petitioner filed his complaint in the United States District Court on February 1, 1993, D.C. No. 93-528. That case was filed despite motions to dismiss being filed resulting in the dismissal of Moretti v. Zisa, et al. [complaint filed October 6, 1992, D.C. No. 92-4206], and Moretti v. State of new Jersey, et al., [complaint filed December 16, 1993, D.C. No. 93-5577]. The complaint in the case at bar was dismissed with prejudice by the Hon. Jobn C. Lifland on August 4, 1993 [as to Judge Sullivan], and on September 13, 1993 [as to Judge Dinice].

Petitioner filed his Notice of Appeal to the United States Court of Appeals for theThird Circuit on September 17, 1994, C.A. No. 93-5581. The Court of Appeals affirmed the judgment of Hon. John C. Lifland on December 2, 1994.

Petitioner applied to the Supreme Court for an extension to file appeal due to a federal bank robbery on August 8, 1994, requiring filing in the Court of Appeals 2d. Cir on March 8, 1995, C.A. No. 95-7060, and due to his filing of a Petition for Certification with the Supreme Court on February 27, 1995 [Moretti v. State of New Jersey, et al, No. 94-1441]. On March 6, 1995, the Clerk of the Supreme Court extended the time to file to May 1, 1995.

## STATEMENT OF THE CASE

Petitioner filed this and two companion cases in federal court in Newark, N.J. [Moretti v. Zisa, et al., D.C. 92-4206, filed 10/6/92,; Moretti v. Dinice and Sullivan, D.C. 93-528, filed 2/1/93, and Moretti v. State of New Jersey, et al, D.C. No. 93-5577, filed 12/16/93]. All three cases were dismissed without discovery under Fed. R. Civ. P 12(b)(6). The record below is summarized in a 625 page brief filed February, 1995 in the N.J. Tax Court [TC-008336-93], which describes the tripling of assessment of petitioner's apartment house, and the 1121% increase in water costs [App. 142]. Petitioner's prior tax court filing in 1982 - 625 pages - placed the parties on notice. Petitioner claims draconian measures such as burning of single family homes (111 Passaic St., 390 Park St), two dozen sheriff's sales of condos (281 & 300 Park St.), bankruptcy sale of 370 Park St - a $3 million apt. house, a contiguous garbage compactor factory, a psychiatric halfway house - 387 Park St.), expansion of two adjacent funeral parlors and rezoning to business, while his tenant is arrested in her home on drug charges in a "school zone" (N.J.S.2C:35-7). Stedtler was arrested upon termination of subsidy support and again after constructive eviction due to utility shut-off. Dinice arrested petitioner during trial in the water case [Superior Court #BER-L-08191-92] on Aug. 17, 1992. Stedtler has been imprisoned since Dec. 1994 in the Edna Mahan Correctional Facility in Clinton, N. J. due to parole violation - living in Passaic, N.J. Petitioner claims violation of his federal civil rights (42 U.S.C. Section 1983), and violation of numerous other state and federal constitional rights.

ARGUMENT IN FAVOR OF GRANTING THE PETITION FOR WRIT OF CERTIORARI.

POINT ONE

NEW JERSEY PROVIDES AMPLE SAFEGUARDS AGAINST JUDGES BECOMING POLITICAL ALLIES OF LOCAL PRESSURE GROUPS, DUE TO ADOPTION OF ITS 1947 CONSITUTION, AND THE ENABLING LEGISLATION PASSED IN 1970 PROVIDING FOR REMOVAL OF JUDGES BY THE SUPREME COURT.

The 1947 New Jersey Constitution, Article VI, Section 6, para. 4 provides that, "the judges of the Superior Court and the Judges of the County Courts shall also [in addition to being subject to impeachment] be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provded by law." In 1970 the New Jersey legislature enacted Ch. 151, N.J. Session Laws 446, which implements the previously dormant 1947 constitutional provision giving the Supreme Court power to remove judges "for such causes and in such manner as shall be provided by law."

The 1970 statutory provision required that evidence be taken before the Supreme Court en banc or before a three-judge panel, that the Supreme Court is expressly given removal discipline jurisdiction over minor court judges, that the Attorney General or his representative prosecute a removal proceeding unless the Supeme Court appoints some other lawyer, and that the Supreme Court is authorized to suspend a judge during the pendency of a proceeding.

As noted in Alshuler, Courtroom Misconduct by Prosecutors and Trial Judges, 50 Texas Law Rev. 629, at 690,

"since January 1, 1970, the New Jersey court system has placed recorders in 200 Municpal Coprts, including all Municipal Courts in cities whose population exceeds 10,000" (Id. at p.701). "Between 1960 and 1970 more than twenty-five states adopted new mechanisms for discipling judges (cites omitted). All of these mechanisms place the final authority for judicial discipline in a court - either the state supreme court or a special court on the judiciary. Although the newly enacted disciplinary mechanisms differ widely in investigative and screening procedures the two leading prototypes are the New York Court on the Judiciary and the California Commission on Judicial Qualifications." (quoting from Braithwaite, "Judicial Misconduct and How Four States Deal With It", Law & Contemp. Prob. p. 155 (1970).

As noted in Annot, 53 A.L.R. 3d 1150, Misconduct in Capacity as Judge as Basis for Disciplinary Action Against Attorney, by Frank D. Wagner, at 1154, "A professional disciplinary action is a special proceeding, neither civil nor criminal, which is grounded upon the inherent power of the court to regulate the conduct of attorneys. It has as its purpose, the protection of the public, the profession, and the courts from those whose misconduct has proved them unfit to be entrusted with the duties and responsibilities of their professional office...in general, an attorney is subject to disciplinary measures for any misconduct, either within or apart from his stricly professional work, so long as

his activities are indicative of moral unfitness for the profession...[p. 1180] [I]t was held that a court has the power to discipline an attorney because of his misconduct in a judicial office in Re Mattera (1961), 34 N.J. 259, 168 A.2d 38. The court reasoned that misbehavior as a judge cannot be insulated from the demands of professional ethics, since the judge's role is so intimately a part of the process of justice that judicial misconduct must inevitably reflect upon his qualification for membership in the bar."

In the first proceeding under the 1970 statute, two judges of the Newark Municipal Court, Aaron Narol and Samuel Lohman were charged with misconduct (acceptance of fees for the performing of marriages). They resigned when a three-judge panel was appointed to take evidence. (Braithwaite, Who Judges the Judges? A Study of Procedures for Removal & Retirement 1971, American Bar Foundation., p.54)

In reviewing the numerous cases conducted by the New Jersey Supreme Court in disciplining judges, it has become evident that the respondents' (Dinice and Sullivan) actions demonstrate an indifference to the rights of defendants which requires their removal from office. A list of these proceedings follows for further reference:

1. In re Palmisano, 18 N.J. 497 (1955). Municipal Magistrate of Fairview, Bergen County, N.J.

represented litigant in zoning matter in Fairview while he was judge there. Public Reprimand.

2. In re Klaisz, 19 N.J. 145 (1955). Municipal Magistrate of East Greenwich Township, practicing law in municipality while magistrate there. Censured.

3. In re Stevens, 20 N.J. 177 (1955), 119 A.2d 9. Municipal Magistrate of Raritan, N.J. 77 year old judge smoked in court, did not wear his robe, offered to dance with a woman reporter, etc. Admitted it was so, he resigned. Order to show cause discharged due to age.

4. In re Mattera, 34 N.J. 259 (1961), 168 A.2d 38. Embezzlement of Funds from traffic summonses. Magistrate of Wildwood , NJ. Respondent was appointed by local officials and was reluctant to cross them. Order to show cause discharged.

5. In re Orsini, 37 N.J. 500 (1962). Magistrate of Monroe Twp, Middlesex County. Fixing of traffic tickets. Respondent resigned. Suspended from the practice of law for six months.

6. In re Pagliughi, 39 N.J. 517 (1963), 189 A.2d 218. Magistrate of Buena Vista Twp., N.J.Engaged in politics (ward leader in Republican Party), attended Sea Girt political meeting. Reprimanded.

7. In re Hayden, 41 N.J. 443 (1964), 197 A.2d 353. Magistrate of Sayreville, N.J. Took certified statement in political election in Sayreville. Reprimanded

8. In re Gurnik, 45 N.J. 115 (1965), 211 A.2d 777 Evaded income taxes while he was a Municipal Court magistrate. Two year suspension from practice of law.

9. In re Sqro, 63 N.J. 538 (1973), 310 A.2d 459, Magistrate of the Hammonton Municipal Court, Another municioal judge, Spitalnick, told him to classify drunk driving ticket as medically related. Suspended from practice of law for six months.

10. In re Spitalnick, 63 N.J. 429 (1973), 308

A.2d 1. Magistrate of the Boroough of Folsom. Fixing of traffic summons. Claimed to Judge Sgro that Pfeiffer's non-appearance on drunk driving summons was due to medical reason. This was a single unfortunate incident. Suspended for two years and until further order.

11. In re Gaulkin, 69 N.J. 185 (1976), 351 A.2d 740. Superior Court Judge. Relaxation of Administrative Policy. Spousal Autonomy.

12. In re Diamond, 72 N.J. 139 (1976), Deputy Surrogate Diamond of Mercer County referred client to lawyer, thereby earning a $2,100 referral fee. This conduct is severely reprimanded pursuant to R. 1:15-1(d).

13. In re Hardt, 72 N.J. 160 (1977), 369 A.2d 5, Municipal Court Judge of Evesham, Burlington County (also Borough of Pemberston, Lumberton, Twp. of Pemberton). Dismissed traffic ticket when police officer failed to appear, and improvised appearance of defendant (who was secretary in law office). Removal from judicial office.

14. In re Yengo, 72 N.J. 425 (1977), Municipal Judge of Jersey City. Excessive use of contempt power. Refused to give postponements. Harsh language. High bail for low income people. Jail sentences frequent. $13,600 for housing code violations due to personal inspection. Disrespected assignment judge. Removed from office.

15. In re Conda, 78 N.J. 229 (1977), 370 A.2d 16, Surrogate was a public officer and employee, in the 1947 Constitution, but the Supreme Court considers him to be a judge, though elected in NJ. Altered bank depository. Censured.

16. In re Albano, 75 N.J. 509 (1978), 385 A.2d 144, Essex County District Court Judge. Lack of judicial demeanor, patience and understanding, sarcastic (as during a landlord-tenant hearing). Censured.

17. In re Vasser, 75 N.J. 357, 382 A.2d 1114. Magistrate of Margate City in Atlantic County,

NJ. Advised Clerk of Ventnor City to defer his client's assault and battery complaint. Suspension for six months.

18. In re De Lucia, 76 N.J. 329 (1978), 387 A.2d 362. Magistrate of Rutherford, N.J. Along with Jack J. Terkowitz, a former judge of Rutherford. De Lucia Resigned as judge. Nevertheless, proceed on the case. Police issued a summons to Barbara Spencer, Terkowitz's secretary, for passing a school bus. She was pregnant. Terkowitz interceded to have the summons set aside due to a incorrectly dated affidavit. Both De Lucia and Terkowitz suspended from the practice of law for one year.

19. In re Di Sabato, 76 N.J. 46 (1978), 385 A.2d 234, Magistrate of East Newark, Hudson County. Magistrate appeared before a municipal court in Madison, (Morris County), N.J. on behalf of his son (Dennis), due to issuance of a traffic summons for speeding. The Madison judge advised the Assignment Judge that this was a quasi-criminal proceeding, and that this judge had appeared representing defendant. Respondent is hereby censured.

20. In re Horan, 85 N.J. 535(1981), 428 A.2d 911, Magistrate of Highlands Borough, Keansburgh Borough, and Keyport Borough. Public Reprimand Applied strict standards of evidence as to Doherty, while liberally applying standards of evidence as to Gross. Censured.

21. In re Murray, 92 N.J. 567 (1983), 458 A.2d 116, Magistrate of the Borough of Far Hills, N.J. Cowan filed criminal complaint against McDonald in Allamuchy Municipal Court. Murray sent letter stating he represented McDonald, cannot represent them now, and they were so advised as they moved - to Texas. Judge Houston of Allamuchy forwarded letter to Municipal Court services. Respondent is reprimanded.

22. In re Coruzzi, 95 N.J.557 (1984), 472

A.2d 546. Superior Court Judge removed from office. Due to a pending case before him, lawyer spoke to judge of letting off his client in return for payment of money. This attorney was then "wired" and on the way to the courthouse gave the judge $12,000. Judge was arrested. The N.J. legislature, upon learning of Coruzzi's arrest, amended the statute so that Coruzzi could not receive his salary for an indefinite period of time pending final disposition of his case. Coruzzi claims this is a bill of attainder, and an ex post facto law. Remove Coruzzi from judicial office - shall never hold judicial office.

23. Matter of Sadofski, 98 N.J. 134 (1985), 487 A.2d 700. Judge of the Superior Court of New Jersey. Judge was hearing 200 to 300 cases per week. Heard a bitterly contested matrimonial matter - Schuster Complaint. Said Schuster was grinning like an idiot. Judge told kid that he was a punk and he (the kid) should not curse. Respondent was the only Juvenile and Domestic Relations Court judge in Middlesex County. Reprimanded.

24. Matter of Alvino, 100 N.J. 92 (1985), 494 A.2d 1014. Judge of the Superior Court. Due to attorney's complaint, Advisory Committee on Judicial Conduct (ACJC) found that judge was dilatory and failed to accurately complete his weekly reports. Public reprimand.

25. Matter of Thompson, 100 N.J. 108 (1985), Magistrate of Westfield, Union County, N.J. Trial of Jeffrey B. Darby resulted in his suicide in jail after his conviction by Judge Thompson. Supreme Court held that failure to advise criminal defendant individually of his constiutional right to counsel and right to have counsel appointed if he were indifgent, failure to swear in as witness either defendant or detective, and failure to inform defendant of reasons for his sentence do not consitute judicial misconduct.

Presentment dismissed.

26. Matter of Yaccarino, 101 N.J. 343 (1985), 502 A.2d 3, Judge of the Superior Court of N.J. Judge Removed from office. Interceded on behalf of his daughter who assaulted a campus police officer who took possession of her unleashed dog. Was an undisclosed owner of two liquor licenses. Sought to purchase a house which was being sold by parties in case being heard by him. Removed from judicial office forever.

26(a). Matter of Yaccarino, 117 N.J. 175 (1989), 564 A.2d 1184, Attorney disciplinary proceeding. Disbarment is appropriate sanction for attorney's misconduct while serving as judge. So Ordered.

27. Matter of Hazlewood, 102 N.J. 635 (1986), 510 A.2d 276. Judge of the Superior Court of N.J. After appointed to the judiciary, offered former client a settlement for mishandling wrongful death action, without informing client to seek independent counsel. Public Reprimand.

28. Matter of Blackman, 124 N.J. 547 (1991), 591 A.2d 1339. Magistrate of Edison Municipal Court. Attended picnic given by the former purchasing agent for Edison Township, who entered a guilty plea to federal racketeering charges. Public Reprimand.

29. Matter of Collester, 126 N.J. 468 (1992), 599 A.2d 1275, Judge of the Superior Court of N.J. On April 28, 1991, drove his car to court house to retrieve a court file - after he woke up Sunday morning after drinking night before. Arrested for drunken driving. Suspended from performance of his duties for two months without pay.

30. Matter of Bozarth, 127 N.J. 271 (1992), 604 A.2d 100. Dealt inappropriately with person talking in his courtroom, and with person arriving late. Reprimanded.

31. Matter of Seaman, 133 N.J. 67 (1993), 627 A.2d 106. Sexual harrassment of female law clerk. 60 day suspension without pay on mostly uncorrob-

orate testimony, which was found acceptable.

What is clear from the foregoing list of cases is that the administration of justice requires a judge whose actions are above reproach. The state legislature acted in 1970 to facilitate removal and censure proceedings replacing the impeachment process with a more appropriate judicial process. The Advisory Committee on Judicial Conduct (A.C.J.C.) is governed by New Jersey Court Rule 2:15. The nine member board shall be composed of two retired judges, and as many as four lay members, who shall be appointed for two year terms (R.2:15-2). Upon a quorum of five members the A.C.J.C. recommends to the N. J. Supreme Court the institution of formal proceedings leading to censure, suspension, or removal of a Judge (R.2:15-3). Complaints indicating that a "judge of the Superior Court, Surrogate's Court, Tax Court or Municipal Court is guilty of (1) misconduct in office, (2) willful failure to perfom judicial duties, (3) incompetence, (4) habitual intemperance, (5) engagement in partisan politics, (6) conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or, (7) may be suffering from a mental or physical disability which is disabling the judge and may continue to disable the judge indefinitely or permanently from the performance of judicial duties, shall make a preliminary investigation to determine what, if any action should be taken therein" (R.2:15-8). The advisory committee's report and recommen-

dations are reviewable by the Supreme Court, whose prerogative it is to issue a complaint against a judge removing him or imposing a lesser penalty. See generally Matter of Sadofski, 98 N.J. 434 (1985).

In Matter of Coruzzi, 95 N.J. 557, Coruzzi challenged in federal court the legality of indefinitely withholding his pay, L.1981, c. 522, authorizing this during removal proceedings. The Court of Appeals for the Third Circuit upheld the constitutionality of the statute, 705 F.2d 688 (3d Cir.1983). Coruzzi challenged the ex post facto law which was passed by the legislature due to his case. The Supreme Court noted that "workers' compensation laws result not from some generalized enlightened ideal but rather from observing the plight of worker after worker, particular people, being injured at particular factories and going withou fair or expeditious compensation (at p. 576). "The purpose of the removal proceedings, and all related aspects of those proceedings, is to regulate the judiciary, to protect the public from dishonest judges, to prevent proven dishonest judges from doing further damage, and above all to assure the public that the judicary is worthy of its trust (at p. 577)".

While Coruzzi was indicted for bribery, Yaccarino argued that the failure of the Attorney General to present the matters subject of his presentment to a grand jury required a finding there was insufficient evidence to warrant removal. The Supreme Court stated "any decision by

the Attorney's General's office not to present this matter to a grand jury involves a discretionary determination by the executive branch and cannot bind or affect the judicial branch in matters conserning the governance of the judiciary. Accord Knigh v. Margate, 86 N.J 374 (1981)." Matter of Yaccarino, 101 N.J. 342, 353. Respondent told defendant in the Rica matter, "Forget about defending yourself. You are dead..." (at p. 354). In a matrimonial case, the respondent stated, "[i]n plain English, ***if I had a stick thirty feet long to reach him now, I would bop him one.**" (at. p. 355) When Helen Bogewicz appeared before the court, she wrote a letter to respondent advising him of facts she believed proved her lawyer failed to properly represent her. He chastised her for her ex parte communication, and the Supreme Court concluded this constituted a violation of Canons 1, 2, and 3A(3)(of the Code of Judicial Conduct)(at p. 359). For this and other reasons detailed in the opinion the judge was removed from judicial office and subsequently disbarred.

The Code of Judicial Conduct states that [Canon 1], a judge shall uphold the integrity and independence of the judiciary; [Canon 2], a judge should avoid impropriety and the appearance of impropriety in all activities; [Canon 3], a judge should perform the duties of judicial office impartially and diligently; [Canon 4], a judge may engage in activities to improve the law, the legal system and the administration of justice; [Canon 5], a judge shall so conduct the judge's

extra-judicial activities as to minimize the risk of conflict with judicial obligations; [Canon 6] a judge shall not receive compensation for quasi-judicial and exra-judicial activities; [Canon 7], a judge shall refrain from political activity [Source: Pressler, Current N.J. Court Rules, 1995, p. 317]. New Jersey incorporated the Canons of Proffesional and Judicial Ethics (drafted by the American Bar Association) into its court rules in 1948 (Rule 1:7-6).

As noted in In re Yengo, 72 N.J.425, 430, "the earlier period of the administration of criminal justice at the local level was described by then Chief Justice Vanderbilt at an Annual Conference of Municipal Magistrates and Attorneys, reprinted at 10 Ruthers L. Rev. 647-48 (1956):

'Under our revolutionary Constitution of 1776 the justices of the peace, along with the judges of the other courts, were elected by the Legislature for a term of years... One of the ways in which our second Constitution, that of 1844, reflected the democratic revolt of the Jacksonian era was in providing for the popular election of justices of the peace by townships and in the cities by wards. Such elections, here and elsewhere throughout the county generally, reflected the popular demand of the period for the direct election of judges who would be 'close to the people,' and no thought was given to imposing any standards or qualifications for the office. Thus the New Jersey Constituion of 1844 put the justice of the peace in

local politics with the undesirable results that inevitably flow from mixing judicial work and politics."

The Yengo court notes that "the copmpensation of those judges depended in part on the penalties they aassessed against defendant they found guilty of some offense..." (In Re Yengo, 72 N.J. 425, 431). Chief Justice Vanderbilt notes that,

"[I]t was no wonder that there was no storm of protest over the exclusion of the justice of the peace from the 1947 Constituion, but instead general acquiescence in the resolution of the delegates to the Constitutional Convention memorializing the Legislature

> to take such action as may be deemed necessary to establish a modern and efficient inferior court system to be presided over by qualified persons and to provide that all judges of the inferior courts receive reasonable fixed compensartion which shall have no relation to fees received.

The legislature acted promptly in response to this mandate by enacting [a law] which abolished not only the justices of the peace, but also "the existing police, magistrate, or recorder's courts, by whatever name called" and provided for the establishment of our present system of municipal courts. [10 Rutgers L. Rev. at 648-49].(Id. at 431).

Matter of Sadofski, 98 N.J. 434 (1985) evaluates the language of a judge receiving a reprimand - the language in similar in some respects to that used by

Judge Yengo, and suggestive of a plain folks approach to law. . Examples of offensive language include , "that sounds like a real horsing around, it sounds like a real jerking around, I don't know what everybody's jollies are stirred up about, what the hell is coming down with you, you're(sic) kid is a punk, a no-good rotten punk."

Matter of Thompson, 100 N.J. 108 (1985) is the only case in which a suicide attracted media attention. The Magistrate of Westfield, Union County, N.J. failed to advise defendant Darby (arrested for theft of tuna fish cans in a supermarket) of his right to counsel and failed to swear in either Darby or his accuser. Thompson claimed he was confused, and short of staff. In the case of Dinice and Sullivan, they have high judicial salaries, and there is no shortage of staff. The A.C.J.C. believed the case to be controlled by In re Yengo, and recommended removal, but the Supreme Court in their independent review of the facts stated that many municipal courts fail to advise defendants individually, relying upon opening statements. The presentment was dismissed.

Based upon the foregoing review of thirty-one cases, we conclude that the concept of absolute immunity of a sitting judge has changed dramatically in New Jersey.

As noted in In re Yengo, 72 N.J.425, 429, "N.J.S.A. 2A:8-1 provides for the establishment of single municipal courts

by ordinance. The judge of a municipal court of a single municipality is appointed by the local governing body pursuant to N.J.S.A. 2A:8-5." Id. at p. 430, "as of the most recent court year statistics, there were functioning 382 municipal court judges in the 567 municipalities of New Jersey. Many judges are appointed to preside in more than one municpal court, particularly in smaller communities. In the court year ending August 31, 1976, the municipal courts in New Jersey processed 3,826,998 complaints. As stated in In re Mattera, 34 N.J. 259, 275 (1961), "for all practical purposes, the judgments of the municipal court are final. It is there that most citizens have their sole exposure to the judicial process."

As of the 1961 decision, In re Mattera, 34 N.J.259, 266, the New Jersey Supreme Court maintained that, "the Constitution provides expressly for the impeachment of members of the courts it creates. Art. VI, Section VI, par. 4. The municipaal court, however, is one of the inferior courts which the Legislature may from time to time establish, alter or abolish (Art. VI, Section I, par. 1) Hence the magistrate is not a judicial officer within the impeachment provision just cited, but if he is a "State" officer, he is subject to impeachment under another provision, Art. VII, Section III, par. 1. The municipal court is an integral part of the statewide judicial system and exercises a power retained by the State and not delegated to local government (cites omitted). (Id. at 268):

The Constitution (Art. VI, Section VI, par. 2) requires that judges of a constitutional court 'shall each prior to his appointment have been admitted to the practice of the law in this State for at least ten years.' The Constitution does not prescibe the qualifications for judges of the inferior courts. As to the municipal court, the Legislature has provided (N.J.S.2A:8-7) that every magistrate 'shall be a *** attorney at law, of this state or a person holding on January 1, 1952 the office of municipal court magistrate***.'"

The Mattera court holds that the 1947 N. J. Constitution "rejects the notion that every judge is sovereign within an allotted domain, accountable with respect to the manner of his performance only to the appointing authority when the question of renewal or incumbency should arise. The judicial branch must function as an integrated whole under responsible supervision (id., at 271)(emphasis added).

POINT TWO

DINICE AND SULLIVAN HAVE BECOME SO EMBROILED IN LOCAL POLITICS, VIOLATIONS OF THE CONSTITUTIONAL RIGHTS OF DEFENDANTS, AND VIOLATIONS OF THE CODE OF JUDICIAL ETHICS, THAT THEIR CLAIMS OF ABSOLUTE IMMUNITY ARE NOT AVAILABLE IN THE CASE AT BAR.

The trial court in the case at bar at App. 5 states that "plaintiff's complaint fails to state a claim upon which relief can be granted as to Judge Sulli-

van becuase he is absolutely immune from damage claims pertaining to acts he performed as a judicial officer." (Ditto Judge Dinice at App. 11).

The case at bar was dismissed on the basis of respondents filing R.12(b)(6) motions. As the Advisory Committee on Rules notes in their 1946 amendment, "on motion under Rule 12(b)(6) to dismiss for failure of the complaint to state a good claim, the trial court should have authority to permit the introduction of extraneous matter, such as may be offered on a motion for summary judgment, and if it does not exclude such matter the motion should then be treated as a motion for summary judgment and disposed of in the manner and on the conditions stated in Rule 56 relating to summary judgments, and, of course, in such a situation, when the case reaches the circuit court of appeals, that court should treat the motion in the same way."

Petitioner maintains that when the federal trial court dismissed the case at the R.12(b)(6) motions based on absolute immunity, it ignored the state and federal constitutional protections afforded to litigants as set forth herein. At App. 62-65, petitioner noted that he filed with the trial court a 200 page document including certifications of a $4,300 per month drop in income on September 11, 1993, The federal complaint was filed February 1, 1993 (App 55). No answers were filed (App. 56). Motions to dismiss were returnable on May 10, 1993 (Sullivan), and August 26, 1993 (Dinice) (App.

56). No oral argument was permitted at either motion hearing. On Aug. 4, 1993, the trial court dismissed as to Sullivan (App. 60). On June 19, 1993 petitioner was attacked by Osuji (App. 61) thereby interfering with petitioner's right to submit material to the trial court. On July 28, 1993, Dinice submitted a trial brief moving for dismissal, return date Sept. 13, 1993 (App. 61). On Aug 4, 1993 petitioner appeared before Dinice on the Osuji matter (witness Fayehun did not appear since he himself had also been attacked and treated by Urgent Care Medical Center), but Dinice recused himself, thereby further preventing resolution of the matter at bar (App. 61). The scheduling magistrate notified the parties of a conference on September 17, 1993, after the complaint had been dismissed as to both respondents, suggesting the case was too rapidly disposed of, even for federal court personnel (App. 57).

Petitioner mainatins that the case was disposed of under a theory of absoute immunity which was rendered moot by the legislative adoption of the 1947 N. J. Constitution, when municipal courts were not allowed to function as mere arms of the local governing body. Dinice's involvement in local politics is clear from his orders to municipal departments (fire, police, and health) to invade the Park Street apartment houses at 370 Park Street (bankruptcy sale in Nov. 1991 - App. 137), and 391 Park Street (petitioner's building).

Louis J. Dinice, respondent within, was admitted to the New Jersey bar in 1970 and was appointed to the Hackensack municipal court in 1986. Timothy J. Sullivan, co-respondent with Dinice, was admitted to the New Jersey bar in 1972, and was appointed to the Superior Court in Bergen County in 1986. Robert Hollis, former lawyer for Moretti and suspended from the practice of law due to Moretti's complaint (failure to serve complaints he filed in Bergen County Superior Court) to the ethics committee in 1980, was the Hackensack public defender under Dinice from 1986 to 1990. Hollis was disbarred in 1994 (note App. 46-47).

While federal trial court judge Lifland dismissed as to both Dinice and Sullivan on the basis of absolute immunity, such immunity obtains for decisions at trial, with defense counsel and due process insured. The complaint at bar states that Stedtler was placed (entrapped?) in a building where months before her entry Price (who broke $400 of windows in her apartment) and Jones were arrested by the Hackensack police for various felonies. All of the actions in petitioner's complaint filed in federal district court were actions outside the courtroom.

In the case of Matter of Bozarth, the New Jersey Supreme Court points out that the excesses of Judge Bozarth carried over to the excesses of court personnel - e.g. a defendant was arrested after first call due to arriving minutes late. The Supreme Court notes that this

excessive strictness is a pattern which must lead to reprimand of the judge who was unaware of the arrest.

This excessive strictness applies to Magistrate Dinice, who heard cases on smoke alarms at 370 Park Street, Hackensack when over two hundred smoke alarms sounded. Petitioner notes a fire truck was dispatched to his building when the alarm rang six seconds (a false alarm results in a penalty of $150).

Administrative searches have been detailed involving the health department (App. 39-42), the police department (App. App. 36-38, 49), the water company (App. 74-78, 91-92, 111-112), the odor case (App. 114-115), etc.

Despite New Jersey's pro-tenant laws, tenants are not benefitted by this excessive strictness. New Jersey's summary dispossess statute (N. J. Stat. Ann. 2A:18-51 et seq.) requires eviction upon non-payment of rent - even if no work is available or possible. High tenant turnover rates result.

As noted at App. 137, two dozen apartments assessed on the condo market at $65,000 each were sold by the sheriff for $100 each in 1992-1993 at 281 Park St. and 300 Park Street, Hackensack. Nevertheless, local property taxes contributed $33 million per year to education, and $28 million per year to the municipal budget in 1994.

The Osuji case (App. 96) typifies an

instance were absolute immunity does not apply. The witness, Fayehun, did not appear at trial since he was assaulted shortly before trial, and Dinice refused to hear the case. At the second trial of Osuji, Fayehun again was assaulted shortly before trial resulting in treatment by Urgent Care medical center.

Fayehun was trying to work on site. He was assaulted there. Workmen were chased away from property maintenance due to poor neighborhood conditions. This is not trial performance, but it results from hundreds of health-fire-police alerts which have no function but to blanket the area. It is just such out of court political action which resulted in the judicial removal of Judge Yengo (72 N.J. 425 (1977) who assessed a $13,600 fine for housing code violations in one building due to his personal opinion. Absolute immunity did not protect Judge Yengo, Judge Coruzzi, or other judges removed from their judgeships.

Upon Stedtler's arrest for violating parole (living in nearby Passaic), she came on for hearing before Judge Sullivan, who had petitioner removed from his courtroom in order to send her to prison in Clinton, N. J. (cf. federal complaint, 93-5577(JWB)). When petitioner appeared before Judge Ellen Koblitz (formerl;y head of the public defender's office), she fined petitioner $2070.40 in the Fields case under the frivolous litigation statute (petitioner sued for rent which was admitted to be owed him, Special Civil 4327-93) found that petitioner

owed the Hackensack Water Co. $6,655.11 (Special Civl 705907), and ordered that Fayehun be allowed entry into petitioner's single family home rent-free (despite the exclusion of such housing from landlord tenant court at N. J. Stat. Ann. 18-61.1). Stedtler was kept in jail for a year before being released - she was released only upon pleading guilty, an inversion of the usual process of trial and punishment.

The influence of Dinice and Sullivan is evident upon court personnel who seem to be swayed more by trial strategy than by constitutional rights.

Petitioner leaves further argument to his related companions federal lawsuits, Moretti v. Zisa, et al., D.C. 92-4206, filed October 6, 1992, and Moretti v. State of New Jersey, et al, D.C. No. 93-5577, filed December 16, 1993. Petitioner reiterates that the violation of federal minimum wage laws is the evident, resulting from over-assessment and producing real estate speculation. This was to be eliminated in the state constitutional revision of 1947.

## CONCLUSION

PETITIONER SEEKS THE OVERTURN OF THE TRIAL COURT DETERMINATION AND TRIAL ON THE MERITS. HE PRAYS FOR RELIEF FROM THE IMPOSITION OF SANCTIONS.

DATE: APRIL 25, 1995
RESPECTFULLY SUBMITTED,

SALVATORE MORETTI, PRO SE
PETITIONER

SALVATORE MORETTI
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646 - 1414

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

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SALVATORE MORETTI,
Petitioner
vs.
LOUIS J. DINICE, AND
TIMOTHY J. SULLIVAN,
Respondents

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SERVICE LIST

1. I, Salvatore Moretti, am the petitioner in the above captioned petition for writ of certiorari to the United States Supreme Court, on appeal from the decision of the Third Circuit Court of Appeals C.A. No. 93-5581, dated December 2, 1994.

2. I hereby certify that I have served the following respondents the required number of copies of the Petition for Writ of Certiorari:

Deborah T. Poritz (On Behalf of Sullivan)
Office of Attorney General
Dept of Law & Public Safety, Div. of Law
Richard J. Hughes Justice Complex
Market and New Warren Streets
Trenton, New Jersey 08625

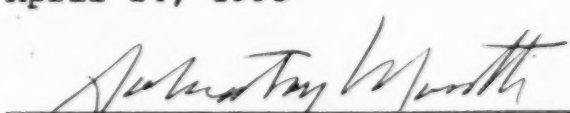
SERVICE LIST (cont.)

Robert Zimmerer, Esq.
(On Behalf of Dinice)
LePore, Zimmerer, & Lepore, Esqs.
Park 80 West, Plaza One
Saddle Brook, New Jersey 07663

3. I have served the Clerk of the Supreme Court of the United States with forty copies of the Petition for Writ of Certiorari within the time allowed pursuant to extension granted by the Clerk of the Court up to May 1, 1995 [App. 1], said appeal from the decision of the Court of Appeal for the Third Circuit, dated December 2, 1995.

4. The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: April 24, 1995



SALVATORE MORETTI, PRO SE
PETITIONER

App. 1

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

William K. Suter
Clerk of the Court
(202)479-3011

March 6, 1995

Mr. Salvatore Moretti
390 Park Street
Hackensack, NJ 07601

Re: Salvatore Moretti
v. Louis J. Dinice and Timothy J. Sullivan
Application No. A-655

Dear Mr. Moretti:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on March 6, 1995, extended the time to and including May 1, 1995.

This letter has been sent to those designated onb the attached notification list.

Sincerely,
WILLIAM J. SUTER, Clerk

By Ruth Jones
for Loretta S. Ruffin
Assistant Clerk

App. 2

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 93-5581

SALVATORE MORETTI,
Appellant
v.
LOUIS J. DINICE
TIMOTHY J. SULLIVAN

On Appeal From the United States District Court For the District of New Jersey
(D.C. Civil Action No. 93-cv-00528)
District Judge: Honorable Jogn D. Lifland

Submitted September 6, 1994

BEFORE: STAPLETON, GREENBERG AND ALITO,
Circuit Judges

JUDGEMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judment of the district court entered September 14,1 993, be and is hereby affirmed.

Costs taxed against appellant.

By the Court,
(s) Walter K. Stapleton,
Circuit Judge

Attest:
(s) P. Douglas Sisk
Clerk

Dated: DEC 2, 1994

MEMORANDUM AND ORDER FILED AUGUST 4, 1993 IN U. S. DISTRICT COURT, IN NEWARK, HON. JOHN C. LIFLAND, CIVIL ACTION NO 93-528 (JCL). FILED AUG 4 1993 AT 8:30 WILLIAM T. WALSH CLERK UNITED STATES DISTRICT COURT. DISTRICT OF NEW JERSEY

SALVATORE MORETTI,
Plaintiff
v.
LOUIS J. DINICE, and
TIMOTHY J. SULLIVAN,
Defendants

MEMORANDUM AND ORDER

Lifland, District Judge

Presently before the Court is the motion of defendant Judge Timothy J. Sullivan ("Judge Sullivan") to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Judge Sullivan also moves for sanctions pursuant to Fed. R. Civ. P. 11.

Background

Plaintiff, Salvatore Moretti ("Moretti"), filed a Complaint against Judge Sullivan and Judge Louis J. Dinice ("Dinice"). Plaintiff alleges violations of his federal constitutional rights and invokes this Court's jurisdicion pursuant to 42 U.S.C. Section 1983.

The allegations relating to Judge Sullivan concern a criminal proceeding brought against plaintiff's tenant, Susan Stedtler ("Stedtler"). The Complaint sets forth the events surrounding Stedtler's arrest and Stedtler's pre-trial hearing. The Complaint alleges that plaintiff, who is not an attorney, attempted to become Stedtler's counsel (Complaint at 79), but Judge Sullivan refused to recognize plaintiff as coun-

sel. The Complaint also alleges that plaintiff, as bail sponsor, attempted to join the action as a party in interest, but Judge Sullivan refused to permit plaintiff to join the action as a party. (Complaint at 79).

Plaintiff appears to allege that Stedtler's pre-trial hearings presided over by Judge Sullivan were deficient. (Complaint at 82). The Complaint alleges that Judge Sullivan refused to provide discovery, refused to hear motions made by Moretti on Stedtler's behalf, refused to recognize Moretti as an aggrieved party, refused to evaluate the quality of Stedtler's court appointed counsel, and refused to allow plaintiff to represent Stedtler. Additionally, plaintiff appears to allege that, at Stedler's trial, Judge Sullivan failed to give proper consideration to an affirmative defense that should have been a mitigating factor in Sullivan's defense. (Complaint at 72).

Discussion

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) may be granted only if accepting all well-pleaded allegations in the Complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief. Bartholomew v. Fischl. 782 F. 2d 1148, 1152 (3d Cir1986); Angelastro v. Prudential - Basche Securities, Inc. 764 F.2d 939, 944 (3d Cir.), cert. denied, 474 U.S. 985 (1985). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to supoort the

claims." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). In setting forth a valid claim, a party is required only to plead "a short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Additionally, the court holds allegations contained in pro se complaints "to less stringent standards than formal pleadings drafted by lawyers." Haine v. Kerner, 404 U.S. 519, 520 (1972)(per curiam).

Plaintiff's complaint fails to state a claim upon which relief can be granted as to Judge Sullivan because he is absolutely immune from damage claims pertaining to acts he perfomed as a judicial officer. See Stump v. Sparkman, 435 U.S. 349, 355-56 (1978); Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347 (1872); Turack v. Guido, 464 F.2d 535, 536 (3d Cir. 1972); Robinson v. McCorkle, 462 F. 2d 111, 113-14 (3d Cir.), cert. denied, 409 U.S.1042 (1972); Gambrell v. Hess, 777 F.Supp. 375, at 380-81 (D.N.J. 1991). In Pierson v. Ray, 386 U.S. 547 (1967), the Supreme Court described the breadth of the immunity accorded judges and explained the reasons underlying this rule of immunity, as follows:

> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiciton, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher...This immunity applies when the judge is accused of acting maliciously and corruptly, and it is not for the protection or benefit of a malicious or corrpt judge, but for the benefit of

the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation. 386 U.S. at 553-54 (citations omitted).

In the instant matter, it is clear that all of the allegations against Judge Sullivan relate to actions taken in his capacity as a New Jersey Superior Court Judge. Therefore, the Court will dismiss the Complaint against Judge Sullivan. Fn.1

Plaintiff alleges that Judge Sullivan acted maliciously and corruptly and is therefore not immune. Pierson holds that the doctrine of absolute judicial immunity applies even if a judge were to act maliciously and corruptly. See also, Glick v. Gutbrod, 782 F.2d 754, 756 (7th Cir. 1986).

Plaintiff also appears to argue that judicial immunity is not applicable in this case because it is based upon Judge

Fn. 1. Furthermore, the Court notes that Moretti lacks standing to bring the instant suit against Judge Sullivan. Judge Sullivan allegedly violated Stedtler's constitutional rights, not Moretti's constitutional rights.

Sullivan's alleged failure to act. However, a Judge is immune for both affirmative acts and omissions which occur throughout judicial proceedings. See e.g. Decker v. Hillsborough County Attorney's Office, 845 F.2d 17, 21 (1st Cir. 1988)(holding that a Judge who failed to rule on various motions before the Court was immune).

Judge Sullivan moves for sanctions pursuant (sic) Fed. R. Civ. P. 11 "the signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge it is well gronded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." The Court may take into account the fact that plaintiff is pro se. Maduakolam v. Columbia University, 866 F.2d 53, 56 (2nd Cir. 1989); See, also, Haines v. Kerner, 404 U.S. 519, 520 (1972)(per curiam)(pro se complaints are to be held "to less stringent standards than formal pleadings drafted by lawyers."). In support of his position that sanctions are appropriate, Judge Sullivan cites to Clark v. Green, 814 F. 2d 221, 223 (5th Cir 1989). In Clark, the plaintiff, proceeding pro se, was sanctioned by the Fifth Circuit for appealing a decison rendered by the District Court which alerted the plaintiff that his claim was frivolous. While Moretti has not received such a warning, his conduct in bringing this tortally meritless suit warrants sanctions, even considering

Moretti's pro se status. Mr. Moretti has stated that he is a law school graduate. (Complaint p.80) This he had the tools available to him in order to conduct a reasonable search as to the applicable law, which he chose not to use. The slightest effort at legal research as to the viability of a suit against a sitting judge for judicial rulings would have informed Moretti that his claim was frivolous, as would the slightest inquiry. The Court is thus satisfied that Moretti chose to burden Judge Sullivan, and thereby this Court, with this litigation out of malice generated by Judge Sullivan's rulings, rather than out of concern for Moretti's constitutional rights.

Accordingly,

IT IS on this 4th day of August 1993, ORDERED that plaintiff's Complaint against Judge Sullivan is dismissed; and

IT IS FURTHER ORDERED that Judge Sullivan's motion for sanctions if granted. Counsel for Judge Sullivan shall submit a certification as to costs incurred in defending Judge Sullivan.

(s) John C. Lifland
United States District Judge

MEMORANDUM AND ORDER FILED SEPTEMBER 13, 1993 IN U. S. DISTRICT COURT, IN NEWARK, HON. JOHN C. LIFLAND, CIVIL ACTION NO 93-528 (JCL). ORIGINAL FILED SEP 13, 1993 WILLIAM T. WALSH, CLERK

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|---|---|
| | UNITES STATES :DISTRICT COURT |
| SALVATORE MORETTI, MEMORANDUM | :DISTRICT OF NEW :JERSEY |
| Plaintiff | :MEMORANDUM AND |
| v. | : ORDER |
| LOUISD J. DINICE, and | : |
| TIMOTHY J. SULLIVAN, | : |
| Defendants | : |
| | : |

Lifland, District Judge

Presently before the Court is the motion of defendant, Judge Louis J. Dinice ("Judge Dinice") to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Judge Dinice also moves for sanctions pursuant to Fed. R. Civ. P. 11.

Background

Plaintiff, Salvatore Moretti ("Moretti"), filed a Complaint against Judge Timothy J. Sullivan and Judge Dinice. Plaintiff alleges violations of his federal constitutional rights and invokes this Court's jurisdicion pursuant to 42 U.S.C. Section 1983.

The allegations relating to Judge Dinice concern judicial proceedings brought against Moretti over which Judge Dinice presided. Moretti alleges that Judge Dinice fined him on non-existent causes of action (Complaint at p. 53), that Judge Dinice repeatedly postponed Moretti's trial forcing him to spend numerous hours sitting in court before

learning that his trial had been postponed (Complaint at pp. 53, 68), that Judge Dinice refused to call any witnesses requested by plaintiff (Complaint at p. 63, and that Judge Dinice refused to allow the City of Hackensack to respond to interrogatories served upon them by Moretti. the alleged third party plaintiff. (Complaint at p. 63-64). Moretti also alleges that Judge Dinice had knowledge of and approved of municipal searches of the aparmtment building owned by Moretti which allegedly resulted in steel doors of the apartment building being broken. (Complaint at 59-60). Moretti also contends that Judge Dinice allowed tenants of the apartment building to withhold their rents and pay their rents directly into the municipal court, causing plaintiff to lose rents (Complaint at p. 61).

Moretti further alleges that Judge Dinice jailed Moretti on two occasions, August 16, 1992 and December 3, 1992. (Complaint at p. 61, 64). Moretti contends that Judge Dinice did not have probable cause when he caused plaintiff to be arrested on August 17, 1992. (Complaint at p. 62). Plaintiff further alleges that his incarceration in the Bergen County Jail Annex prevented plaintiff from appearing before the Superior Court on other matters, thereby allegedly depriving plaintiff of his Fifth Amendment right to trial. (Complaint at 62). Moretti contends that Judge Dinice's decision to incarcerate Moretti on December 3, 1992 was a result of Judge Dinice's learning that Moretti intended to

appeal the water case. (Complaint at p. 32 & 64). This incarceration allegedly prevented Moretti from atteding a pretrial conference in Superior Court on December 4, 1992, thereby allegedly depriving him of his Fifth Amendment rights. (Id.)

Discussion

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) may be granted only if accepting all well-pleaded allegations in the Copmplaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief. Bartholomew v. Fischl. 782 F. 2d 1148, 1152 (3d Cir1986); Angelastro v. Prudential - Basche Securities, Inc. 764 F.2d 939, 944 (3d Cir.), cert. denied, 474 U.S. 985 (1985). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). In setting forth a valid claim, a party is required only to plead "a short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Additionally, the court holds allegations contained in pro se complaints "to less stringent standards than formal pleadings drafted by lawyers." Haine v. Kerner, 404 U.S. 519, 520 (1972)(per curiam).

Plaintiff's complaint fails to state a claim upon which relief can be granted as to Judge Dinice because he is absolutely immune from damage claims pertaining to acts he perfomed as a judicial officer. See Stump v. Sparkman, 435 U.S.

349, 355-56 (1978); Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 347 (1872); Turack v. Guido, 464 F.2d 535, 536 (3d Cir. 1972); Robinson v. McCorkle, 462 F. 2d 111, 113-14 (3d Cir.), cert. denied, 409 U.S.1042 (1972); Gambrell v. Hess, 777 F.Supp. 375, at 380-81 (D.N.J. 1991), aff'd 970 F. 2d 898 (3d Cir.), cert. denied 113 S. Ct. 272 (1992). In Pierson v. Ray, 386 U. S. 547, 553-54 (1967), the Supreme Court described the, breadth of the immunity accorded judges and explainted the reasons underlying this rule of immunity, as follows:

> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiciton, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher...This immunity applies when the judge is accused of acting maliciously and corruptly, and it is not for the protection or benefit of a malicious or corrpt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.
> 386 U.S. at 553-54 (citations omitted).

In the instant matter, it is clear that all of the allegations against Judge Dinice relate to actions taken in his capacity as a Hackensack Municipal Court judge. Therefore, the Court will dismiss the Complaint against Judge Dinice.

Plaintiff appears to allege that Judge Dinice acted maliciously and corruptly. However, Pierson holds that the doctrine of absolute judicial immunity applied even if a judge is accused of acting maliciously and corruptly. 386 U.S. at 554.

Plaintiff's case, at least in part, is based upon Judge Dinice's alleged failure to hear Moreetti's case due to repeated postponements, and upon Judge Dinice's alleged failure to call any witnesses requested by Moretti. However, a judge is immune for both affirmative acts and omissions which occur throughout judicial proceedings. See e.g. Decker v. Hillsborough County Attorney's Office, 845 F.2d 17, 21 (1st Cir. 1988)(holding that a Judge who failed to rule on various motions before the Court was immune).

Judge Dinice moves for sanctions pursuant (sic) Fed. R. Civ. P. 11 "the signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge it is well gronded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." The Court may take into account the fact that plaintiff is pro se. Ma-

duakolam v. Columbia University, 866 F.2d 53, 56 (2nd Cir. 1989); See, also, Haines v. Kerner, 404 U.S. 519, 520 (1972)(per curiam)(pro se complaints are to be held "to less stringent standards than formal pleadings drafted by lawyers."). In support of his position that sanctions are appropriate, Judge Dinice cites to Clark v. Green, 814 F. 2d 221, 223 (5th Cir 1989). In Clark, the plaintiff, proceeding pro se, was sanctioned by the Fifth Circuit for appealing a decison rendered by the District Court which alerted the plaintiff that his claim was frivolous. While Moretti has not received such a warning, his conduct in bringing this totally meritless suit warrants sanctions, even considering Moretti's pro se status. Mr. Moretti has stated that he is a law school graduate. (Complaint p.80) This he had the tools available to him in order to conduct a reasonable search as to the applicable law, which he chose not to use. The slightest effort at legal research as to the viability of a suit against a sitting judge for judicial rulings would have informed Moretti that his claim was frivolous, as would the slightest inquiry. The Court is thus satisfied that Moretti chose to burden Judge Dinice, and thereby this Court, with this litigation out of malice generated by Judge Dinice's rulings, rather than out of concern for Moretti's constitutional rights.
Accordingly,

IT IS on this 13th day of September 1993, ORDERED that plaintiff's Complaint against Judge Dinice is dismissed; and

IT IS FURTHER ORDERED that Judge Dinice's motion for sanctions is granted. Counsel for Judge Dinice shall submit a certification as to costs incurred in defendant Judge Dinice.

(s) John C. Lifland
United States District Judge

MEMORANDUM AND ORDER FILIED OCT 19, 1993
AT 3:30 P.M. WILLIAM T. WALSH, CLERK
GRANTING SANCTIONS TO DINICE $1613.65

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| | UNITED STATES DISTRICT |
| SALVATORE MORETTI, | COURT. DISTRICT OF |
| Plaintiff: | NEW JERSEY |
| v. : | CIVIL ACTION NO: 93- |
| LOUIS J. DINICE and: | 528 (JCL) |
| TIMOTHY J. SULLIVAN: | MEMORANDUM AND ORDER |
| Defendants: | |
| : | |

LIFLAND, District Judge

Presently before the Court is the certification of Robert Zimmer ("Mr. Zimmer"), the attoney for defendant, Judge Louis J. Dinice ("Judge Dinice"), detailing the costs incurred in defending the lawsuit brought by plaintiff Salvatore Moretti ("Moretti") against Judge Dinice. Mr. Zimmer has submitted the certification in response to the Court's request in its action against Judge Dinice and imposing sanctions on Moretti.

In its Memorandum and Order dated September 13, 1993 this Court granted Judge Dinice's motion for sanctions against Moretti. The Court reasoned that even though Moretti was pro se, his conduct in bringing this totally meritless suit warranted sanctions. Because Moretti stated that he was a law school graduate, the Court determined that Moretti had the tools necessary to conduct a reasonable search as to the applicable law regarding judicial immunity, which he chose not to do. The slightest effort at legal research would have

informed Moretti that his claim was frivolous.

Mr. Zimmer was hired by the City of Hackensack to defend Judge Dinice in this litigation. Mr. Zimmerer submitted a Certification of Services stating that the costs incurred in defending Judge Dinice were $1643.65. Mr. Zimmer asks this Court to enter sanctions in that amount.

Mr. Zimmer's certification shows that Mr. Zimmer spend 19.5 hours in defending Judge Dinice. The Court finds that Mr. Zimmer's hourly rate was $75.00 per hour, plus costs. (Zimmer Certif. at Paragraph 2). The Court also finds $75.00 per hour to be a reasonable hourly rate.

Mr. Zimmer's fee for performing 19.5 hours of work at $75.00 per hour was $1462.50. In addition, Mr. Zimmer also incurred costs of $151.15 in defending Judge Dinice.

Accordingly,

IT IS on this 19th day of October 1993 ORDERED that plaintiff shall pay to the City of Hackensack sanctions in the amount of $1613.64 within 30 days of the entry of this order.

(s) JOHN C. LIFLAND
United States District Judge

MEMORANDUM AND ORDER FILED OCT 27 1993 AWARDING SULLIVAN $2,780.50 BY JOHN C. LIFLAND, J.U.S.D.C.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SALVATORE MORETTI, : CIVIL ACTION 93-528
Plaintiff: (JCL)
v. :MEMORANDUM AND ORDER
LOUIS J. DINICE and:
TIMOTHY J. SULLIVAN:
Defendants:
:

LIFLAND, District Judge

Presently before the Court is the affidavit of Patrick DeAlmeida ("Mr. DeAlmeida"), Deputy Attorney General for the State of New Jersey, who represented defendant Judge Timothy J. Sullivan ("Judgew Sullivan"), detailing the costs incurred in defending the lawsuit brought by plaintiff Salvatore Moretti ("Moretti") against Judge Sullivan. Mr. DeAlmeida has submitted the affidavit in response to the Court's request in its Memorandum and Order dated August 4, 1993 dismissing the action against Judge Sullivan and imposing sanctions on Moretti.

Even thought Moretti was pro se, his conduct in bringing this totally meritless suit warranted sanctions. Because Moretti stated that he was a law school graduate, the Court determined that Moretti had the tools necessary to conduct a reasonable search as to the applicable law regarding judicial immunity, which he chose not to do. The slightest effort at legal research would have informed Moretti that his claim was

frivolous.

Mr. DeAlmeida submitted an affidavit stating that the costs incurred in defending Judge Sullivan were $2700.00 in attorneys fees and $80.50 in duplicating costs. Mr. DeAlmeida asks this Court to enter sanctions in the amount of $2780.50.

Mr. DeAlmeida's affidavit shows that he spent 36 hours in defending Judge Sullivan. The Court finds that Mr. DeAlmeida's expenditure of 36 hours on this matter is reasonable. The Division of Law set an hourly rate of $75.00 per hour to be a reasonable hourly rate. Duplicating costs of $80.50 are reasonable.

Accordingly,

IT IS on this 26th day of Octobver 1993 ORDERED that plaintiff shall p;ay $2780.50 to the State of New Jersey, Division ofLaw, within 30 days of the entry of this order.

(s) JOHN C. LIFLAND
United States District Judge

COMPLAINT FILED WITH U. S. DISTRICT COURT, DISTRICT OF NEW JERSEY, CASE NUMBER 92-4206(JCL) February 1, 1993

SALVATORE MORETTI, PRO SE
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-1414

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

| | |
|---|---|
| SALVATORE MORETTI, Plaintiff | CASE NUMBER 92-4206 |
| vs. | COMPLAINT |
| LOUIS J. DINICE, AND TIMOTHY J. SULLIVAN, Defendants: | JURY DEMAND |

PARTIES

Plaintiff
Salvatore Moretti, Pro Se
390 Park Street
Hasckensack, New Jersey 07601

Defendants
Louis J. Dinice
Hackensack Municipal Court
215 State Street
Hackensack, New Jersey 07601

Timothy J. Sullivan
Bergen County Justice Center
10 Main Street
Hackensack, New Jersey 07601

Attorneys For the Defendants
Not Known at the Present

## JURISDICTIONAL STATEMENT

Jurisdicition of this court is invoked pursuant to 42 U.S.C. Section 1981, 1982, & 1983.Fn.1 The State courts have excluded the federal actions through too narrow a view of federal justiciability requirements.

Plaintiff is the record property owner of a 20 unit apartment house at 391-397 Park Street, Hackensack, New Jersey, in the county seat of Bergen County. The assessed value of the buildings is $766,800, with the assessed value of other owned parcels equal to $266,300; the annual Hackensack real estate taxes are $24,897.71.

In the case at bar, the subject neighborhood in the central business distridct has gone through a major population change - more welfare recipients compose the tenant population, the 500 apartment units (three of the building are new) on the four blocks composing Park street house 700 tenants who demand services to cope with difficult social, family, and ethnic problems. The city's response is smoke alarm drills, police checks, and health citations, which are of an emergency nature and hence provide no long term relief. Responding to daily emergencies calls for on-site management, Fn1.

The Civil Cover Sheet states in addition: Cause of Action includes Federal Constitution: Fourth Amendment - Search and Seizure; Sixth Amendment, Confrontation of witnesses, etc.; Seventh Amendment, Jury Trial; Eigth Amendment - Excessive Bail; Fourteenth Amendment - due process, etc.

drives up costs, and all but eliminates daily maintenance.

In the case at bar, plaintiff has sought state judicial relief in the Law Division, Chancery Division (C-2541-78. C-4640-78, C-545-79), State Tax Court (Moretti v. Hackensack Docket No. L-5847-78, 02-23400A-79), and Appellate Division over a period of forty years. (Operating through a number of mayorships (Moretti vs. Frank C. Zisa, Mayor of the City of Hackensack, John J. Johnson, Hackensack Tax Assessor, and the Bergen County Board of Taxation, Docket No. L-200600-80), class action status has matured through several rent control challenges, and through several apartment owners associations.

Due process violations are significant within. These violations work hardship on the seven hundred tenants living on Park Street through increased costs at a time when many are on fixed incomes, whether due to age, or welfare, or unemplyment. A city once content to act through well maintained buildings, now finds surprise police and fire inspections more persuasive. Several hundred fire drills have boosted turnover rates to the 50%-85% level in the affected areas, where the prior turnover was 10% per annum. Long term investment in competent houseing maintenance is replaced by a preference for filing summonses for insignificant repairs, substituting municipal oversight for competent onsight managment. The Fifth Amendment to the Constitution prohibits the taking of private propperty without just compen

sation. Plaintiff's attempt to produce tax relief produced only negligible reductions in assessments. Despite significant investments in residential housing in the subject neighborhood, poor living conditions require a direct federal Constututional and Statutory challenge.

WATER: The recent water shut-off case is a case on point. This is a case filed in the State system, Superior Court-Law Division, Moretti vs. Hackensack "Water Company, and Board of Regulatory Commissioners, Docket No. BER-L-8191-92 (a water shut-off case). This case is currently being heard in the Hackensack Municipal Court as a nuisance case, State of New Jersey vs. Salvatore Moretti (with third party complaint against the Hackensack Health Department, the Bergen County Sheriff's Office, and the Hackensack Police Department S426599, W337641, The municipal court summons reads as follows: "Complainant Patricia Farlie of the Health Department upon oath says that between 28th of July to 17th of August, 1992, in the City of Hackensack,County of Bergen, did: within the jurisdiction of this court fail to supply a plentiful supply of pure water suitable for domestic and personal use to all tenants and fail to supply hot water to apartment (sic) located at 391 Park St after notice had been given by the City of Hackensack, contrary to sections 114 Ordinance 51-78 Section 114-2 (10) Ordinance 24-81 Section 98-3. - Summons Issued 8-18-92."

This case is also being heard as a

bill dispute by the Superior Court Special Civil Part, DC-705907-92. In the municip[al court subpoenaed witnesses do not appear, August 19 and 26, 1992. The municipal court refused to hold non-appearing witnesses in contempt.

An interlocutory appeal to prevent irreparable harm was heard by Judge Naomi Eichen, J.S.C. on July 14 and 27, 1992. On August 7, 1992, Judge James T. Murphy, J.S.C. heard plaintiff's motion for an injunction. On August 13, 1992 plaintiff filed a motion for leave to appeal from the Order of Judge James T. Murphy, J.S.C. Order dated August 7, 1992. That order held as follows:

"This matter being opened to the Court by Salvatore Moretti, plaintiff property owner and...it NOT appearing that due notice of this motion has been served upon the defendant Hackensack Water Company and Board of Regulatory Commissioners, it is on this 7th day of August, 1992 ordered that the motion to restrain the Hackensack Water Company from Discontinuing Water Service to Park Court Apartments is denied."

Am August 8, 1992 motion for rehearing delivered to the defendant water company and deputy attorney general was denied, and plaintiff within appealed to the appellate division - On August 13, 1992, the water company dispatched a work crew to shut off the water, and plaintiff supplied the supervisor on site with a copy of the Notice of Motion. On the day of oral argument, August 14, 1992, at 10:00 a.m. plaintiff spoke to the Appellate Division making last minute arrange-

ments while a Hackensack Policeman broke into his office and listened at the door. Upon hearing his presence discussed with the Appellate Court, he quickly departed. The Appellate Division inquired whether plaintiff believed that the trial courts could provide relief. He replied that he believed Judge Naomi Eichen was concerned about the facts of the case. However, she had been advised by Deputy Attorney General Michael Berman, Esq. representing the Board of Regulatory Commissioners at hearings on July 14, 20, and 27 on the motion for an interlocutory injunction - order to show cause, and by John P. Wallace, Esq. representing the Hackensack Water Company, that the Office of Administrative Law in Newark had primary jurisdiciotn over the matter. Plaintiff within questioned this, on the basis of the Equity court cases on water shut-off cases.

Not only has the case law changed in this area of the law since the 1800's but the New Jersey Administrative Code has changed in favor of more protection for consumers versus the utility companies, gas, electric, and water. For example, N.J.A.C.(s.b.N.J.Admin.Code)14:3-7.12 dealt with Notices of Discontinuance, N.J.A.C. 14:3-7.12A protects welfare recipients in case of termination of utiilities, N.J.A.C. 14:3-7.13 provides for bill disputes. In the case here, Moretti received bills for three years for 5,873,296 gallons of water, totalling $17,024.17. N.J.A.C. provides that (a) a utility shall not discontinue service because of non-payment of bills in cases

where a charge is in dispute; N.J.A.C. 14:3-7.13(c) deals with deferred payment agreements where 25% of the bill may be collected, N.J.A.C. 14:3-7.14, deals with discontinuance of residential service to tenants. N.J.A.C. 14:3-3.8 deals with access to customer's premises. Here the plaintiff within insisted that his meter be read, maintained an on-site office, but the water company relied on estimate. With the 12 quarter three year total at 5,873,296 gallons, that figures out to 1,957,765 gallons per year, and for 20 apartments that computes to 268.19 gallons per apartment per day. The total cost of $17,024.17 for the past three years figures to $5,674.72 per year. This water consumption was during a period of higher than usual vacancies. Figuring one toilet flush at 3.5 gallons, every toilet on the property (20 toilets) would have to be flushed 76.63 times to consume that much water. At three minutes per flush, this means that 3.8 hours each and every day for each and every apartment the toilet would have to be flushed. For one bedroom apartments, this is not reasonable. N.J.A.C. 14:3-4.10 deals with meter replacement. N.J.A.C, 14:3-7.9 deals with forms of bills for metered service. Section b-1 requires that utility companies shall maintain a regular meter reading schedule and make a reasonable effort to read all meters.

No effort was made to read the meters, since the water company depended upon a non-functional telephone meter reading system that had not worked for

three years. Subsection 6 of N.J.A.C. 14:3-7.9(b) reads that "if low estimates result in a customer receiving an actual bill that is 25 percent greater than the prior estimated bill, the company shall allow the customer to amortize the excess amount". The amortization will be in equal installments over a period of time equal to the period when no actual reading was taken by the customer or the company. In the case sub judice, "defendant received four estimated bills in the last six quarters...a bill for $1,008 follows one for $747 (35% increase), one for $1,242 follows one for $871 (40% increase), one for $2,470 follows one for $1,297 ($200% increase immediately before the shut-off). This is a true bill dispute in the eyes of the judicial decisions of New Jersey and the majority of jurisdictions.

In a September 16, 1992 letter to Judge Edward J. Van Tassel, J.S.C. plaintiff within wrote as follows:

"What Berman (the Deputy Attoney-General) seems to be in avoiding the law, namely that there is a good faith dispute exception which prevents water shut off. 28 A.L.R. 472.112 A.L.R. 237, Sims v. Alabama Water Company, 205 A.L.R. 378, 87 So. 688, Birmingham Warterworks Co. v. Keiley (1911) 2 Ala. App. 629, 56 So. 838, (1912), 5 Ala. App. 474, 59 So. 338, Birmingham Waterworks Co. v. Davis(1918) 16 Ala. App. 333, 77 So. 927, Louisville Tobacco. Warehouse Co. v. Louisville Water Co. (1915) 162 Ky. 478, 172 S. W. 928...Cases holding an injunction should issue are Wood v. Auburn., 87 Me. 287,

287 L.R.A. 376, 32 A.T.L. 906, Carter v. Suburban Water Co.,131 Md. 91, 101 Atl. 771, Gordon & Ferguson v. Doran, 100 Minn. 343, 111 N.W. 272, Mansfield v. Humphreys Mdq. Co. 92 N. E. 233..." In plaintiff's September 8, 1992 letter to Berman and Wallace, he wrote as follows: "In Montalvo v. Consolidated Edison Co. of N.Y., 441 N.Y.S. 2d. 768 the conflict between the law courts and the exhaustion of administrative remedies came up and was decided in favor of the legal remedy...It would be futile to seek exhaustion of administrative remedy. Watergate II Apartments v. Buffalo Sewer Authority, 46 N.Y.2d. 52, 385 N.E. 2d. 570 (1978)...In Bradford v. Edelstein, 467 F. Supp. 1361 (1979) a customer filed a 14th amendment U. S. Constitution case with the Texas District Court after his water shut-off. The court found that he received no hearing prior to shut off and that the plaintiff's rights were violated. He was allowed to sue under 42 U.S.C.A. Section 1983 and as a class action suit.

Due to the language of Judge Murphy's decision, "and it NOT appearing that due notice of this motion has been served upon the defendants, the Appellate Division order on Aug.14, 1992 stated that new notices should be sent out in its Aug. 14,1992 Order. The order reads: 1) The denial of the motion for a mandatory injunction is without prejudice to movant's right to apply to the trial court on notice to respondents for such relief as may be appropriate, and 2) respondent, Hackensack Water Company,

shall forthwith notify Bergen County Board of Social Services and the Bergen County Housing Authority of the shut-off of water services at the indicated address and of the rights of the clients...to make individual arrangments for reconnection of water service." Practically, the result was that the Bergen County Housing Authority refused to pay its subsidy rent payments.

Armed with the Appellate Division order, plaintiff within filed a motion for an interlocutory injunction and sought a judge on emergent duty on August 14, 1992. None was available. Finally, after having waited in five courtrooms until 5 p.m. on August 14, plaintiff left to return Monday morning at 9 a.m. Judge Patrick F. X. Fitzpatrick was to hear the motion at 1:30 p.m. On that day, John P. Wallace appeared on behalf of the water company. Plaintiff's law division case had been filed June 26, 1992, the water was shut off on August 13, 1992. The judge advised plaintiff to proceed into the corridor and offer Mr. Wallace a check. With check in hand plaintiff went into the corridor whereupon he was arrested under an outstanding warrant for his arrest put out by a vigilant Hackensack municipal court judge, Louis Dinice. The plaintiff was placed in the Bergen County Jail Annex on River Street. The $10,000 bail money put up to extricate him from the jail was then used to pay the outstanding water bill, according to the Hackensack municipal prosecutor. Municipal oversight had turned into a substitute property management office and

paid the clearly excessive bill. ($17,000 for three years of use of 5.9 million gallons of water). Instead of the desired economy and benefit to tenancy, a 500 gallon per day per apartment water bill was paid, unjustly high for welfare clients.

When plaintiff appeared before the Hackensack Municipal court he asserted that the water company did water searches for Hackensack and hence had an unfair advantage, the judge verbally demanded rent payments by the welfare agencies be seized. A building properly requiring less than twelve hours per week now requires twelve hours per day.

Plaintiff within filed a zoning complaint against G. Thomas Gentile, Gutterman-Musicant Funeral parlor, & Hackensack Board of Adjustment, Docket No. BER-L-09278-92; (a variance to put a funeral parlor onto residentially zoned R-3B Park street). In this action G. Thomas Gentile applied to the Hackensack Board of Adjustment for a variance from the zoning code on July 15, 1992. Applicant sought to put parking within five feet from the adjoining lot lines in a residential district, and "for such other variances as the Zoning Board may determine are necessary at said public hearing." At that meeting applicant appeared without professional planner, or architect, or traffic expert. Applicant was the sole witness testifying in behalf of the variance. Moretti testified in opposition. The variance was granted after a very brief discussion by the Board of Adjustment.

FIRE: In State of New Jersey vs. Salvatore Moretti vs. Hackensack Fire Department, Richard Carucci, and the Construction Board of Appeals, Municipal Court Docket No. 92-2449, plaintiff was fined for failing to make door repairs at the site. The fine was based on an order which was changed by the Construction Board of Appeals upon application by Moretti, hearing on June 2, 1992, Case #C-82-92. When the new orders were issued by the Construction Board, Moretti was in compliance but the old fine was inexplicably left intact. The fire department official, Richard Carucci filed a complaint on behalf of the Hackensack Construction Board of Appeals with the Municipal Court. Plaintiff filed a third party complaint against Carucci and the Construction Board. The fire department had performed the inspections and made recommendations relating to fire-proof doors at the Park Court buildings, pursuant to the Uniform Fire Code regulations.

The Hackensack city attorney wrote to plaintiff and Judge Louis Dinice by letter dated August 25, 1992 that there was no such thing as third party practice in any municipal court in New Jersey, hence plaintiff's third party complaint must be dismissed. Clearly third party practice, cross-complaints, adn counter-complaints are filed at all levels of the judicial system. The Rules of general application apply to municipal courts. As stated in R.1:1-1, "Unless otherwise stated, the rules in Part are applicable to the Supreme Court, the Superior Court, the Tax Court, the surrogate's court, and

the municipal court." The 1992 edition of Pressler, Rules Governing the Courts of the State of New Jersey, comments on this rule that "local rules are particularly improper where the import of the local rule is to attempt to withhold from the trial judges of the vicinage the right to resort to the full panoply of procedures and discretions expressly authorized by the rules. See Cunningham v. Rummell, 233 N.J. Super. 15, 18-19 (App. Div. 1988)." In the case at bar, the facts of the case cannot be evaluated without resort to third party practice. Rule 1:1-2 provides for the relaxation of the rules in order to secure a just determination, and produce fairness in administration. The Rules of General Applicaiton at R. 1:6-4 provides for the filing of motions, cross-motions, and affidavits and orders. R.1:6-4(b)(7) provides for joining additional parties or impleading parties or certifying as a class action. Although these seem to be Superior Court matters, if the problem is municipal and the municipal court is required to deal with local matters, then the local court must exercise judicial cognizance over the substance of the dispute.

The Hackensack City Attorney challenged the discovery open to plaintiff. Plaintiff filed interrogatories on various parties, such as the Hackensack health department, the Hackensack police department, the Construction Board of Appeals, etc. citing to the Rules Governing Practice in the Municipal Courts, specifically R. 7:402. Proceedings

Before Trial Section (h): "Deposition and discovery in any case in which the defendant may be subject to imprisonment or other consequence of magnitude if convicted shall be as provided by R. 3:13-2 and R3:13-3 provided that the municipality in which the case is to be tried has a municipal prosecutor."

Richard E. Salkin, Esq., Hackensack City Attorney, by letter of August 25, 1992 in reState -vs- Moretti 92-2449, stated as follows:

Please be advised that I am the City Attorney for the City of Hackensack. As such, the purported interrogatories delivered by you to Battalion Chief Carucci's office have been forwarded to me. Please note the following: 1/ The case caption you have created, purporting to designate the Hackensack Fire Department, Richard Carucci, and the Construction Board of Appeals does not exist. There is no "Third Party Practice" in Hackensack or any other Municipal Court of this State. 2/ Similarly, there are no provisions for the service of Interrogatories (nor the answers thereto) under the Court Rules you have cited. The Hackensack Fire Department, Battalion Chief Carucci, and the Construction Board of Appeals will not be responding to your: Interrogatories". Please govern your actions accordingly.

An additional letter was delivered by the City Attorney on September 11, 1992, in re State -vs- Moretti, Summons Nos. C-92-2946, C-92-2916, and C-92-2940: "I note that you have again sought to

serve purported interrogatores upon the City of Hackensack regarding matters now pending in the Hackensack Municipal Court.

As I have previously advised you (by letter of August 25th, 1992) there are no provisions for the service of Interrogatories (nor the Answers thereto) under the Court Rule you have cited.

Therefore, neither the City nor any agent thereof will be responding to your "Interrogatories".

I would suggest that you consult further with the Rules of Court to ascertain how to obtain discovery with respect to quasi-criminal charges now facing you."

cc: Honorable Louis Dinice, J.M.C.

On August 26, 1992, Paul L. Potenza, 155 Polifly Road, Hackensack, wrote in re State of N. J. v. Moretti v. Hackensack Fire Department, et al.," 92-2449, as follows:

"Please be advised that I am the attorney for the Hackensack Construction Board of Appeals. I have reviewed the documents entitled 'Interrogatories Served by Third Party Plaintiff Upon Fire Department, Richard Carucci, and the Construction Board of Appeals which you forwarded to and which were received by the Construction Official George Dalie yesterday, August 25, 1992...There will be no answer to these interrogatories forthcoming from any of the parties you have designated as 'third party defendants in what further appears to be your self-styled and fictional 'caption.'" Thank you.

The value of third-party practice is the joining of parties not named in the main action without whose presence the action is incomplete. As noted in Perello v. Woods, 197 N.J. Super 539 (Law Div., 1984), the Court denied a motion to dismiss by the third party defendant, City of Newark, which was premised upon the lack of Notice of Claim by the plaintiff. The court considered adn declined to follow the opinion in Ezzi vs. De Laurentis, 172N.J. Super. 592 (Law Div. 1980). In part the court relied upon the policy against piecemean litigation. "Government Tort Litigation in New Jersey", p. 47, 2nd ed., John S. Fitzpatrick, N.J.I.C.L.E.

Pressler, "Current New Jersey Court Rules", (Comment) to Rule 4:8-1. Third Party Brought in by Defendant, states that "thus a third-party complaint for contribution by either a public or non-public defendant may be served upon a public entity covered by the New Jersey Tort Claims Act, N.J.S. 59:1-1 et seq., although neither the plaintiff nor the third party plaintiff has, with respect to the third party defendant, complied with the time requirements of N.J.S. 59:8-8, and although that non-compliance would bar the plaintiff from amending his complaint to state a claim against the third-party defendant. See Markey v. Skog, 129 N.J. Super. 192 (Law Div. 1974), Dembro v. Union City Pk Comm., 130 N.J. Super 450 (Law Div. 1974); cf. Speer v. Armstrong, 168N. J. Super 251 (App. Div. 1979), affording plaintiff the benefit of defendant's timely actions

vis-a-vis a municipal third party defendant."

Plaintiff's September 27, 1992 letter to Judge Dinice notes that "the possibility of prejudice of defendant's whole controversy status requires service of such third party complaints preferably with the answer to the complaint, as was done in the municipal court matter involving the Hackensack Water Company and the administrative inspection by the Fire Department. The defendant cannot force the plaintiff to institute lawsuits against the third party defendants who may be wholly responsible for the case against the defendant. In such a case, impleading is required for without it, the cause of action has no meaning whatever."

As noted in Moore, "Federal Rules Pamphlet" Rule 14, Impleading permits all claims arising out of the same transaction or occurrence to be heard and determined in the same action. Atlantic Coast Line R. Co. v. United States Fidelity & Guaranty Co., 1943 52 F. Supp. 177.

ALEXIS: On June 14, 1992, a rather insignificant event jolted consciousness. Two white Hackensack police officers broke into Edwina Alexis' apartment at Park Court Apartments. At noon Sunday plaintiff suggested that the Hackensack police should check if there was anyone in the apartment first by using the pass-key he held in hand. This common sense approach was rejected with the statement that welfare recipients need not have a warrant to effect entry. The fire dept. was

called to axe the door down. The result was that a dead-bolted steel door was broken down; the city attorney stated in his Answer that there was no claim - due to the New Jersey Tort Claims Act. But the Tort Claims Act does not insure those who act with malice. Section 1983 does not depend upon satisfying the qualification of the New Jersey Tort Claims Act for it to be effective. Plaintiff's fourth amendment rights had been violated, the right to be free from unreasonable searches and seizures.

As a result of the above described events, plaintiff filed suit in the Special Civil Part of the Superior Court, Salvatore Moretti vs. Edwina Alexis, Hackensack Police Department, and Hackensack Fire Department, Docket No. DC-700124-92. Interestingly, not one interrogatory has been answered by Hackensack or any of its agencies, which claim through the city attorney that the municipality need not answer.

Richard E. Salkin's Answer dated July 24, 1992 states as follows:
"The City of Hackensack, A Municipal Corporation of the State of New Jersey, incorrectly described as the "Hackensack Police Department" and the "Hackensack Fire Department" in the Complaint, says, by way of Answer to the Complaint:
1. The allegations contained in the complaint as they pertain to this Defendant, are DENIED.

FIRST SEPARATE DEFENSE

The complaint fails to state a cause of action upon which relief may be granted.

SECOND SEPARATE DEFENSE

This defendant violated no duty owed to Plaintiff.

THIRD SEPARATE DEFENSE

The Complaint is barred by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

SEARCHES: When plaintiff maintained before the state court system that there was a consitutional dimension to his lawsuits, this was denied. Maintaining an office and residence in the subject neighborhood for two decades on a daily basis proves that the official response was wrong. When plaintiff maintained that the state court system should enforce the Constitution of the United States and of the State of New Jersey, that was denied. The official response was wrong. When plaintiff maintained that his federal civil rights guaranteed under 42 U.S.C. Section 1983 were violated, that was denied. The casual response was that civil rights were not interpreted that way, here. Civil rights suits were pragmatically used to put people into housing with subsidy agents paying their rent. This official administrative response is too narrow.

Unfortunately, smoke alarm alerts are manufactured to gain control over properties. At 370 Park Street (constructed in 1980), a nearby 72 unit building, ten fire alarm alerts in one day occurred, thrity-five in one week, about 200 in one year. The owner was forced into recveivership and a sale. The mortgage had to be recast.

Plaintiff within has suffered from

numerous administrative searches. Such searches while often at the behest of health inspectors or fire officials, can involve threats of warrants issued on the slightest pretext. Plaintiff has suffered thourgh every imaginable administrative search from squirrels in the attic to dampness in the cellar. The fact that the complaining wihtnesses had just bounced three twelve hundred dollar checks or were incarcerated in Bergen Pines had not been considered. Tenants use health complaints as a pretext to reduce rent payments. Since municipal officials cannot keep pace with rapid tenant turn-over, tenants merely effect the results necessary in maintenance to reduce living conditions which then can be utiliazed to reduced rent dedmanded. This drives responsible management to sale, resulting in large scale block busting. Excessive conversion of rental stock into condominium or cooperative housig removes good apartment units from the rental market, which is preferred by lower income households such as those subject within.

To quote the Transcript of Proceedings of the Hackensack Municipal Court Docket No. C89-2519, Hon. Louis J. Dinice Presiding, September 28, 1989 (vol. 1),

Mrs. Madeville: The problem is that there's an odor emanating from the basement area of Mr. Moretti's business...
Judge Dinice: Mr. Moretti...you will be held in contempt of court and you'll be arrested--...Mr. Moretti, did you hear what I just said?
Mr. Moretti: (ommitted - members of the Hacken-

sack police department) were in there three nights all night long.
Judge Dinice: You are to leave here immediately and allow Mrs. Mandeville into that area that she wants to get into.
Mr. Moretti: She was already there.
Judge Dinice: I don't care whether she was there or not...Sir.I'm speaking. Okay? Mrs. Mandeville is going to go there right now. All right. You're going to remain in Court. All right? If the door is not open, you're going to go to jail. It's as simple as that. All right?
Mr. Moretti: Shall I give you the names of the people in that case?
Judge Dinice: Sir, sir, did you hear what I just said? Did you hear what I just said?...if he refuses to open the doors just let me know and I'll issue a warrant for his arrest...
Mrs. Mandeville: He opened the door for us, Your Honor...
Judge Dinice: Any idea what the odor is, Mr. Moretti?
Mr. Moretti: I, I have no idea of what Mrs. Mandeville is referring to. As a matter of fact, I was just there and there is absolutely no odor preesent in that area--
Judge Dinice: Here is what I would suggest you do, sir (the tenant - a witness). Take whatever course of action you must take, at whatever expense, and deduct it from the rent and then let Mr. Moretti bring you to landlord and tenancy court. And then when you have to go to Court, when he sues you for the balance due on the rent, you can bring Mrs. madeville in and you could also subpoena the transcript of this hearing...If he disobeys that order he well be arrested.
Mr. Moretti:-- I would request cross-examination of the complaining witness.
Judge Dinice: There is no cross-examination. We

haven't had a trial yet...Cross-examine - Mrs. Beavers.

Mr. Moretti: Have you ever seen an Exhibit, which I have here for marking, which states that due to the late payments of certain residents of the apartment house I am commencing to evict dated August 1, 1989--Exhibiti 10.

Judge Dinice: Not relevant, it will not be used...Next question.

Mr. Moretti: Have you ever been specifically advised that because of the impersonation of your husband as a police officer, that his approach to various tenants in order to prevent access to the apartment is improper?

Judge Dinice: Not relevant. Next question.

Mr. Moretti: Have you ever been advised that your vehicle which bears the statement that your husband and you are members ot the Teaneck Police Department , is illegally parked on the premises?

Judge Dinice: Not relevant, Next question. (Next question asked)

Not relevant. You'll be--not required. You'll be not permitted to ask any further questions because your questions are not responsive to the issue before the court. Thank you. You may sit down, Ma'am...(Mr. Beavers sworn in, and cross-examined.) Excuse me Mrs. Mandeville, you're still under oath. Have you ever determined what the source of the odor was?

Mrs. Mandeville: No, Your Honor, I haven't...

Judge Dinice: In your opinion, is it detrimental to the health of the people living above that odor?

Mrs. Mandeville: I don't know what the odor--I don't know what the chemical is. I don't know what kind of an odor, you know, whether it is or isn't detrimental.

Mr. Moretti: (Cross-examining): Have you any

report from the Bergen County Police or the Health Department or is there anyone in your employ or associated agencies of the Hackensack Municipal Government which had delivered to you a specific piece of paper or document or any infomration , which you can produce today, stating that the odor or chemical or agents which are subject to this complaint are detrimental to the health of the apartment occupant of 397A Park Street?

Mrs. madeville: No, I can not. (Next, Mr. Moretti sworn in.)

Judge Dinice: Do you have any idea where the odors are coming from?

Mr. Moretti: The odors--what odors? You've not identified which odors. There may be thirty classes of odors.

Judge Dinice: You know I'm finding your attitude very contemptuous and in about thirty seconds, I'm going to commit you to the Bergen County Jail...Okay. I've heard enough. I've had an opportunity to hear the testimony, where --the credibility of the witnesses before me. I find you guilty of violating this particular ordinance (Summons S257805, September 25-27, 1989, violation of Ordinance 51078, and Ordinance 11402.18.) The fine will be $500, $25 costs and $30 to the VCCB. Thnak you, pay the clerk.

LAWYER: Plaintiff has continuously raised constitutional challenges, without avail. A basic right denied is the right to legal representation guaranteed by the Sixth Amendment to the Constitution. When plaintiff insisted upon filing legal papers through his attorney a decade ago, Robert Hollis, Esq., Hollis failed to serve summons and complaints and was suspended from the practice of law -

notice dated February 3, 1982 New Jersey Law Journal (Salvatore Moretti vs. Robert A. Hollis, Esq. etl al. Docket No. L-48567-79). The subject matter of the complaints (Chancery Division Cases: C-2541-79, C-4640-78, C-545-79) grew out of a similar fact pattern in the litigation in this jurisdictional statement. Plaintiff demanded trial by jury, guaranteed by the Seventh Amendment - "in suits at common law...the right of trial by jury shall be preseved." Hollis had filed three law division cases and complained to plaintiff about the switch into chancery - in cases like there, if you file in law they complain you should have filed in chancery, and if you file in chancery, they complain you should have filed in law.

Exactly ten years ago, October, 1982, plaintiff herein filed a Notice of Motion for Leave to Appeal for an Interlocutory Injunction by Superior Court - Law Division (Bergen County) Judge Leo Yanoff, Judge Yanoff had ordered the inspection of plaintiff's federal income rtax returns in the malpractice suit (which resulted in Robert A. Hollis, Esq. being suspended from the practice of law). The statement of facts, although written a decade ago, precisely foretells the situation today. The motion was on appeal from the order of Judge Yanoff entered on September 28, 1982. When plaintiff appeared for the hearing on his case, he was jailed by Yanoff. Quotting from papers submitted to the Appellate Division of the Superior Court of New Jersey: "The complaint in this

lawsuit was filed by Salvatore Moretti on May 12, 1980...Moretti filed the lawsuit pro se because he was unable to retain legal counsel to handle the matter." (The order entered by Judge Yanoff required that Moretti retain legal counsel, and produce federal income tax returns, the bug-a-boo of lawyers peering into one's financial affairs, even though a legitimate legal malpractice matter was involved.) "This is a legal malpractice case charging the defendant law firm and its members, Hollis and Pessin, with negligently handling litigation. The complaint contains ten counts...A veritable deluge of mail from the defendants and from Judge Yanoff has cluttered plaintiff's mails, tieing up his life in endless paperwork. Plaintiff's business and education have come to a stand-still. The demands of the defendants are never ending and oppressive. Appeals to Judge Yanoff have been futile...The defendants were to institute suit against the Gutterman, Musicant...funeral parlor, but failed to do so...(Count Five): This count deals with nuisances emanating from a boarding house located at 111 Passaic Street, Hackensack. That boarding house...burned down on March 10, 1978. It is 65 feet from Park Court Apartments, and it is adjacent to the (Gutterman-Musicant) parking lot. (Count Six): This count deals with a traffic "accident"...Hollis admitted two years later that he was a close personal friend of (the driver of the vehicle)...Hollis conseled against filing suit against them. (Count Seven): This count deals

with the (Gutterman-Musicant) funeral parlor and its attempt to expand into the R-3B use district occupied by Park Court Apartments. (Count One): The defendants were to institute suit against the (Gutterman-Musicant) funeral parlor - which rented a home adjacent to Park Court Apartments (391-7 Park Street) to North Jersey Friendship House (a psychiatric half-way house)...(Quoting the hearing on the motion on September 29, 1982):
Judge Yanoff: Mr. Moretti, if I had a sergeant-at-arms here I would have to direct him to phusically take you away from the cousel table."

Plainitff appealed from the grant of summary judgement as to counts 1, 3, 4, & 8, Filed September 29, 1982, to the New Jersey Supreme Court L-48567-79, 80-3528, Appellate Division docket No. AM-1108-81T1.

The Supreme Court of New Jersey, District Ethics Committee for Bergen County, District II, File No. II-79-41E met on April 3, 1980, with committee members present, Gary Stein, Esq., Joseph C. Woodcocok, Esq., Walter Gloeckner, Lay Member, Donald R. Sorkow, Esq. attorney presenting for the committee, Robert A. Hollis, Esq., pro se. The manner in which this committee treated plaintiff within is suggestive of the problem with client's rights in the state court system. Instead of being allowed to speak simply, plaintiff's testimony was tailored by continuous interruptions, making Hollis look innocent, and over-simplify-

ing the matter. To quote verbatim from the transcript:

Mr. Stein: "What would help us would be, Mr. Sorkow, if you examine Mr. Moretti as to the matters charged in the complaint.
Mr. Sorkow: Right.
Mr. Moretti: By way of explanation--
Mr. Stein: There's no question for you. There's no question to you now.
Mr. Moretti: Well, what I'm stating is that--
Mr. Stein: Mr. Moretti, excuse me. Mr. Sorkow is going to question you...Mr. Sorkow, could you proceed.
Mr. Moretti: Yes. I would like to have a transcript in regard to (my testimony)--
Mr. Stein: No.
Mr. Moretti:--In regard to Rule 1:20-5.
Mr. Stein: We've had a request for a transcript from another witness and I recall you making that request before. As I stated before, and now I'll say it on the record, it's my understanding that you're not entitled to a transcript. But I'm going to inquire with Central Ethics, that administers the Ethics rules and Procedures, and if I'm wrong, we'll supply you with one, But my understanding of the Rules is that you're not entitled to one...
Mr. Moretti: Well, you just stated that regarding the rules. I quote from Rule 1:20-5.
Mr. Stein: Excuse me. I am not going to make that determination now. I want to consult with Central Ethics...
Mr. Moretti: There's no reason to go back to the matter. It's one sentence. I can read it.
Mr. Stein: Look: I will run this hearing and you're either going to cooperate or we'll excuse you. But this is not you're hearing. This is an Ethics Committee hearing. You're a witness.

You're here voluntarily or by subpoena?
Mr. Sorkow: Voluntarily.
Mr. Stein: We would like you to testify in accordance with our procedures and that's what we want you to do...
Mr. Sorkow: I'd like to offer into Evidence this letter from Mr. Moretti to Mr. Hollis dated November 3, 1978. Any objection.
Mr. Hollis: No. No objection.
Mr. Stein: C-11 in Evidence.
Mr. Sorkow: Now in this letter dated November 3, 1978, marked C-11 in Evidence, Mr. Moretti, you state in your last paragraph: "I am interested in a class action and consolidation of zoning matters, which you suggest, but I feel we should bring all matters to light at our November 18, 1978 hearing***." Where did you get the information that there was going to be a hearing on November 17, 1978?
Mr. Moretti: Mr. Hollis told me...that date had been assigned for the court to hear the Friendship House lawsuit.
Mr. Sorkow: Did there come a time that you determined that there was an order dismissing this case on October 25, 1978?
Mr. Moretti: Yes.

Hollis never appeared at trial before a jury. No money award for damages ever resulted. Instead Judge Yanoff merely dismissed the case after five years of legal maneuvers moving back and forth between non-jury trial courts and appellate courts.

Typically, necessity dictates that economic interests rely upon speedy approval of variances by Boards of Adjustment such as Hackensack's zoning board. One such case involved jademar Industrial Company's applcation for a

variance at 381 Park Street, Hackensack. Hollis failed to serve summons and complaint in this case as well. The Superior Court of New Jersey, Appellate Division, A-3609-78, upon hearing the appeal of the variance found as follows (April 23, 1980):

PER CURIAM

"Although failure to issue summons within "10 days after the filing of the complaint" is proscribed by R.4:4-1, dismissal of the complaint for violation of the Rule is not warranted by the delay alone--there must be a resultant prejudice to the rights of the defendant consequent upon the delay. (Cites ommitted) Inasmuch as the dismissal here was made without an inquiry into the issue of prejudice, without any proofs with reference thereto and without any finding of prejudice to the defendant Jademar as a result of the delay in the issuance of process, the judgment of the Law Division must be reversed and the cause remanded for a plenary hearing and a determination of said issue in light of the applicable law...Our review of the entire record satisfied us that the variance was improperly granted...Reversed and remanded."

Hollis rejoined the bar as an attorney in criminal practice, Jademar continued in its office building, the funeral parlor sold the friendhsip house to a real estate developer for development as a parking lot. When the developer met with opposition at the board of adjustment, he sold the property to Jademar. Plaintiff purchased the single family house known as 390 Park Street (Block 415, Lot 8B)(September 30, 1980);

Jademar busily completed their offrice building and when plaintiff within completed legal training, purchased this lot (Block 418, Lot 24)(February 25, 1985)

Since Hackensack has a combined sewer and septic system the State has required that it be separated, and in the interim only dry hook-ups are permitted. this has effectively prevented developement of the 10,000 square foot site, which is now vacant - as a result of the prior ownership. Gutterman-Musicant purchased the property for $45,000 and used its existing boarding house. Now a vacant lot, it is currently assessed at $90,000 over its prior assessment.

PART TWO

Moretti vs. Alexis, Police Dept., & Fire Dept. Case.

The Salvatore Moretti vs. Edwina Alexis, Hackensack Police Department, Hackensack Fire Department case in Special Civil Part, Superior Court, Law Div. (Bergen), Docket #DC-700124, came on for trial (after three discovery motions) on January 15, 1993. Like other matters pending in the State Court System, the matter was not readily disposed of, despite the emergency complained of - breaking and entering, physical damage to premises, refusal to pay even liquidated damages (steel dead-bolted door knocked down by axe-carrying firemen). Hackensack Municipal attorney Salkin filed an Order of Dismissal to dismiss the case without trial, and plaintiff filed a Notice of Motion for Leave to Appeal with

**IN THE UNITED STATES
COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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SALVATORE MORETTI,
Plaintif-Appellant
v.
LOUIS J. DINICE, and
TIMOTHY J. SULLIVAN,
Defendants-Respondents

---

CASE NO. C. A. 93-5581
TRIAL COURT: D.C. 93-528 (JCL)

ON APPEAL FROM: UNITES STATES
DISTRICT COURT, DISTRICT OF
NEW JERSEY
SAT BELOW: HON. JOHN C. LIFLAND

BRIEF BY:
PLAINTIFF-APPELLANT
SALVATORE MORETTI, PRO SE
390 PARK STREET
HACKENSACK, NEW JERSEY 07601

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Procedural History

Plaintiff-appellant filed the case of Salvatore Moretti v. Louis J. Dinice, and Timothy J. Sullivan in the United States District Court on February 1, 1993. That case was filed subsequent to the entering of the order in a companion case, Moretti v. Zisa, et al. [Docket No. D.C.92-4206) to the effect that "all defendants and all counsel having represented that certain dispositive motions are to be filed and served on behalf of all defendants, and for good cause shown...all defense motions to dismiss plaintiff's Complaint shall be filed and served or or before February 5, 1993, all discovery shall be stayed pending the disposition of said motions..." In fact, no trial was held in that companion case, since the motions to dismiss were granted, despite the objection of plaintiff within.

Clearly, with no discovery allowed in any of the three federal court actions (hereafter the three companion cases) - the third case being Moretti v. State of New Jersey, et al., Docket No. D.C.93-5577, also dismissed under Fed. R. Civ. P. 11 and 12(b)(6) - the filing of this complaint under the Federal Civil Rights Statutes can be viewed as being a constitutional inquiry into the rights of plaintiff-appellant [as a property owner of residential apartment house property] and his tenants. Court appearances are a daily occurrence for such businesses, and both Dinice and Sullivan in treating the cases brought before them had reduced living standards through jailing tenants

and plaintiff himself. This was detailed in the trial court briefs and the complaint.

The fifty-one page jurisdicitonal statement prefacing the complaint cannot set forth more faithfully the bases upon which the federal court action rests. While Dinice in the Municipal Court of Hackensack undertook to try cases over which the Special Civil Part of the State Superior Court system had jurisdiction, Sullivan jailed Stedtler (a tenant) for one year under charges stemming from her occupancy of the apartment house property - said jailing was commenced by the breaking and entry into her apartment by party or parties unknown.

No answers to the complaint at bar were filed and served by the defendants; rather the defendants chose to file motions to dismiss pursuant to Fed. R. Civ. P.12(b)(6) and for imposition of sanctions under Fed. R. Civ. P.11. The motions were returnable on May 10, 1993 (Sullivan) and August 26, 1993 (Dinice), but no oral argument was permitted, although plaintiff-appellant sought same and appeared on each return date at the court house.

Sullivan argues in his motion that his position in support of his motion to dismiss the complaint "is a simple one. Because all of the allegations made by plaintiff concern actions taken by Judge Sullivan while he was presiding over judicial proceedings he is protected from suit by judicial immunity...Thus, the

complaint fails to state a claim upon which relief can be granted." Dinice in his brief of July 28, 1993 claims that "all allegations made against defendant, Dinice, were for actions taken in his position of Municipal Court Judge of the City of Hackensack. Defendant, Dinice, now moves for an order dismissing the Complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P.12(b)(6) and for imposition of sanction against Plaintiff pursuant to Fed. R. Civ. P. 11."

The letter-brief of defendant Sullivan dated March 31, 1993 combined the procedural history and statement of facts, thereby avoiding the necessity of stating that no answer was filed, nor was any judicial proceeding instituted in which discovery, cross-examination, prosecution of the case, or defense was possible. No pre-trial conference was held, and the attempt by Magistrate Hedges to schedule same was not timely.

On September 17, 1993 Magistrate Ronald J. Hedges issued a letter order stating "on or about October 1, 1993, I will issue a Scheduling Order in this civil action...I expect to be advised whether any dispositive motions are pending." Plaintiff-appellant wrote to Magistrate Ronald J. Hedges on October 1, 1993 that in view of the opposition of the defendants to a scheduling conference pursuant to Fed. R. Civ. P.16(b), the defendants have "tried the case outside of the jury's hearing, found the jury incompetent to hear the case, relied upon matters dehors the record by referring to

the prior dismissal of Moretti v. Zisa et al. 92-4206(HAA), and then under the guise of a Motion for Dismissal under Fed. R. Civ. P. 11 and 12(b) have in fact proceeded to a motion for summary judgment, without any of the hearing requirements of answering the questions set forth in the moving papers of the plaintiff." Based upon the rulings of Judge Lifland that the defendants were absolutely immune from suit, Magistrate Hedges notified the parties he would not proceed to a scheduling conference.

Sullivan's motion to dismiss admits that the complaint arises from plaintiff's management of an apartment building (Complaint pp. 1-57). Sullivan further admits that plaintiff-appellant "owned the property on which Ms. Stedtler was arrested." Sullivan acknowledges that the pre-trial proceedings were called to question in that "Judge Sullivan did not give 'proper consideration' to a statutory affirmative defense that might be available to Ms. Stedlter at her trial - i.e. that the statute N.J.S.A. 2C:35-7 provides that affirmative defenses be included in cases where there is arrest in the home - 397-D Park Street, Hackensack. Sullivan quotes plaintiff-appellant without comment that "Judge Sullivan simply refused to hear any motion, to provide any discovery, to dismiss the case, to evaluate the nature of evidence subject to a suppression hearing, to evaluate the quality of Stedtler's court appointed legal counsel, to reduce bail - all, plaintiff alleged, against the law, in sum an illegal incarceration. (Com-

plaint p. 77)." Sullivan omits the fact that he not only incarcerated Stedtler for one year without speedy trial but further that he refused to allow Stedtler out of jail until he both got a conviction and elicited her testimony against third persons.

The motions of Dinice and Sullivan omit the fact that Dinice allowed the Hackensack Water Company to shut-off the water at the apartment house on August 13, 1993, Stedtler was forced out of the building due to no water thereby setting her up for re-arrest on October 1, 1993 after plaintiff-appellant had bailed her out of the Bergen County jail. Both motions to dismiss fail to consider the bases upon which aggrieved persons may be parties, such that the failure to pay contracted rent presumptively does not entitle plaintiff to party status under N. J. Court Rule 3:5-6 - Aggrieved Party. The nature of the incarceration is informative in that plaintiff noted in his April 20, 1993 brief that Michael Ravin of the public defender's office no longer represented Stedtler after May 20, 1992, and that "plaintiff noted that the public defender's office refused to contact him as to alibis, or for any other reason, and that the jail conditions under which the defendant was held were primitive. The classification of the defendant in her incarceration failed to take into account her physical health or her mental condition. Linda Biancardi, the public defender assigned to the case, failed to return phone calls and the former tenant said she could not contact her attorney."

Also neglected by the defendants is that the Bergen County Board of Social Services subsidized Stedtler's tenancy until November, 1992, whereupon it abruptly terminated subsidy payments under the guise of allowing entry of an overnight guest - the BCBSS even solicited plaintiff-appellant's testimony on same as lessor through the service of a subpoena. The deputy attorney general impugns plaintiff-appellant's honesty by stating that "confusingly, plaintiff also alleged that by virtue of his property ownership he should have been joined in the criminal proceeding, presumably as a defendant." Is the DAG suggesting that the plaintiff is the recipient of the proceeds of illegal acts through his acceptance of rent payments?

On August 4, 1993, Hon. John C. Lifland filed a Memorandum and Order concluding that "the slightest effort at legal research as to the viability of a suit against a sitting judge for judicial rulings would have informed Moretti that his claim was frivolous, as would the slightest inquiry. The Court is thus satisfied that Moretti chose to burden Judge Sullivan, and thereby this Court, with this litigation out of malice generated by Judge Sullivan's rulings, rather than out of concern for Moretti's constitutional rights. Accordingly , IT IS on this 4th day of August, 1993, ORDERED that plaintiff's Complaint against Judge Sullivan is dismissed; and IT IS FURTHER ORDERED that Judge Sullivan's motion for sanctions is granted. Counsel for Judge Sullivan shall submit a certification as

to costs incurred in defending Judge Sullivan."

On August 4, 1993 plaintiff-appellant appeared before Judge Dinice as a result of having been physically assaulted by Killian Osuji on June 19, 1993 at 6:43 p.m. while managing his property and on the premises of 391 Park Street, Hackensack. Dinice both refused to hear the case claiming conflict of interest and assigned out the case to Saddle Brook municipal court, whereupon the case was mishandled due to faulty identification/ appearance of the perpetrator of the assualt and battery - the assailant was a tenant of 370 Park Street. Dinice's attorney claimed in his answering letter dated August 24, 1993 to the district court that "the pro se plaintiff appears to raise new allegations against defendant, Dinice, regarding a recent assault and battery claim. However, defendant Dinice, has refused to hear said matter due to the conflict of interest that would exist (Judge Dinice would be deciding a case wherein the plaintiff in this matter [Moretti] is the defendant [the complaint filed by Moretti was against Killian Osuji who was listed as the defendant - there was no notice that Osuji had filed a complaint against Moretti.]"

The brief submitted by Dinice on July 28, 1993 (return date September 13, 1993) has no procedural history. There is a "statement of facts," which is misnamed in that no facts appear therein. The four sentences state a complaint was

filed January 30, 1993, but since "all allegations made against defendant, Dinice , were for actions taken in his position of Municipal Court Judge of the City of Hackensack, Defendant, Dinice, now moves for an order dismissing the Complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P.12(b)(6) and for the imposition of sanctions against Plaintiff pursuant to Fed. R. Civ. P.11.

On August 4, 1993, plaintiff-appellant submitted a certification complaining that there was no motion to transfer as to forum non conveniens by either himself or the defendant, Killian Osuji. On September 11, 1993, plaintiff-appellant wrote that "no more classic case can be described of an instance in which the matter should be considered by the City of Hackensack or the Bergen County Prosecutor's Office" in which plaintiff was attacked by a man resident at 370 Park Street, Hackensack, the building adjacent to his home and place of employment.

The Septmeber 11, 1993 certification submitted by plaintiff-appellant shows a $4,300 per month drop in monthly income from the apartment house property. Note is made that "among the cases presided over by Judge Dinice was the case involving the Hackensack Water Company (a billing dispute in which Dinice chose to incarcerate me twice in the Bergen County Jail Annex for inability to collect rents sufficiently high to pay the inflated water bills served upon me by the Hacken-

sack Water Co.). The water company has billed me for over one million gallons of water in one quarter for a twenty unit apartment house (with one toilet per apartment). Their water charges are so inflated that they have refused to identify how that much water could be used by the twenty one-bedroom units, have failed to answer interrogatories; they have failed to supply engineering reports stating the average gallonage per unit per month per apartment....Judge Ellen Koblitz (who along with Judge Sullivan chose to incarcerate a tenant on a drug charge in the capacity of Deputy Ellen Koblitz of the Public Defender's Office), heard the water company case which was then appealed to the Appellate Division."

At issue is whether Stedtler's defense under the direction of Ellen Koblitz was genuine, when Koblitz was elevated to a judgeship in March, 1993, at which time she heard cases as the presiding judge of Special Civil Part (hearing matters in landlord-tenant court). As presiding judge she reversed the decisions of Judge Ralph Polito and ruled in favor of the Hackensack Water Company, awarding $6,655 for water Consumption, ruled in favor of the Bergen County Board of Social Services in the Fields case - frivolous litigation to collect unpaid rent, $2,070), and ruled in favor of Fayehun who was ordered to remain a tenant at the home of plaintiff-appellant, despite the fact that the statute does not grant jurisdiction to the special civil part in cases where the home is owner-occupied and rents to only

two tenants. Similarly, Osuji was not subpoenaed by the court even to answer the complaint filed in special civil.

Even the most basic representation of Dinice would have included the admission by counsel that Dinice was a lawyer in the state of New Jersey listed in the New Jersey Lawyers Manual for 1992-1994. In addition to practicing law, Dinice was shown in the lawyer's manual as the judge of three contiguous municipalities, Hackensack, South Hackensack, and Little Ferry (at a salary of over $61,000). The issue of conflict of interest Dinice claims on the Osuji matter stems from the possibility that Dinice is Osuji's lawyer. Other similar conflicts of interest can be seen in many other matters, such as whether in the practice of law Dinice finds it convenient to rule as he has in his judgeship. Dinice's legal representation has not only failed to touch upon this, but this matter has not been addressed by the decisions of Judge Lifland as to either Dinice or Sullivan. Can Judge Koblitz be an adversary of Judge Sullivan, when both share judgeships in the same court house and lawyer Koblitz fails to represent Stedtler but rules against plaintiff-appellant even when she has no jurisdiction over the case (and is in a conflict position as well)?. Is the listing of Dinice as a part-time judge at over $900 per week salary by Hackensack alone representative of practice consistent with the ethical rules adopted by the state judicial code? These issues were not addressed by the defendants lawyers nor Judge Lifland.

On September 13, 1993, Judge John C. Lifland filed a memorandum and order as to Dinice. Judge Lifland's language closely parallels the prior order as to Sullivan. The court concludes as follows: "The slightest effort at legal research as to the viability of a suit against a sitting judge for judicial rulings would have informed Moretti that his claim was frivolous, as would the slightest inquiry. The Court is thus satisfied that Moretti chose to burden Judge Dinice, and thereby this Court, with this litigation out of mailice generated by Judge Dinice's actions, rather than out of concern for Moretti's consitutional rights. Accordingly, IT IS on this 13th day of September 1993, ORDERED that plaintiff's Complaint against Judge Dinice is dismissed; and IT IS FURTHER ORDERED that Judge Dinice's motion for sanctions is granted. Counsel for Judge Dinice shall submit a certification as to costs incurred in defending Judge Dinice."

On September 14, 1993, plaintiff-appellant served and filed a two-hundred page appendix including the answer to the municipal court complaint (relating to the Hackensack Water Company) dated August 25, 1992), the 117 page transcript of those proceedings (which concluded on December 3, 1993), the six page brief in support of vacating of judgments by Ellen Koblitz, J. S. C. in the cases of Moretti v. Fields and Bergen County Board of Social Services, DC-4327-93, Moretti v. Hackensack Water Company, DC-705907-92, and Ballard v. Moretti, SC-585-93, etc.

On October 19, 1993, Judge Lifland awarded $1,613.65 to Dinice lawyer, based on 19.5 hours on the case. On October 26, 1993, Judge Lifland awarded $2,780.50 to Sullivan's lawyer, based on 36 hours of time on the case.

On September 17, 1993 plaintiff-appellant filed his notice of appeal with the United States Court of Appeals for the Third Circuit from the judgments of Judge John C. Lifland, stating that "there were no trial transcripts to order below in the trial court...no oral argument was allowed at the motions." Plaintiff-appellant filed various motions to stay imposition of sanctions, etc. in the U. S. Court of Appeals. During the pendency of this case, the companion case of Moretti v. Zisa, et al. was docketed in the United States Supreme Court.

On May 12, 1994, plaintiff-appellant attended a deposition conducted by Dinice and pursuant to court order by Magistrate Hedges. In the February 1, 1993 complaint itself and at deposition plaintiff-appellant emphasized that the federal guidelines for garnishment were exceeded by the increase in the assessed value of the property by three hundred percent, resulting in the inability to draw a salary from the subject property. The federal guidelines are set forth at 15 U.S.C. Section 1671, et. seq. which are incorporated in the New Jersey Court Rules at R. 4:59-1(d) [which cites to N.J.S. 2A:17-50 et seq. and N.J.S. 2A:17-47 et seq.]. By letter of June 12, 1994, and at deposition on May 12, 1994 plain-

tiff-appellant notified Dinice that the 1993 real estate taxes alone were $28,351.21, the utility bill was $15,300, the water bill was $7,451. These three bills ($51,101) were in addition to costs for painting, plumbing, electrical, snow removal, extermination, management and advertising, insurance, maintenance and supplies, locksmith, glacier, legals, and office expenses. As such, the costs of operation exceeded the gross rental income chargeable (income is considerably below $100,000. How then can the assessed value be $750,000, as maintained by the City of Hackensack, which is supported in its position by Dinice who took jurisdiction over such cases as the Beavers case (three bounced checks - a landlord-tenant matter) or the water case (pending in the superior court). Judge Lifland claims that the suit was meritless, yet tenants incarcerated in jail cannot pay rent, nor can plaintiff-appellant incarcerated in jail collect rent.

Additional issues which required exploration prior to Judge Lifland's imposition of sanctions were whether plaintiff-appellant could have borrowed the money required to pay the water bill, or whether the tenants could afford to pay the rents necessary to comply with court orders. Consider that as many as fifty landlord-tenant trials were required to obtain the four hundred dollars rental - on average - which was collected. Neighborhood conditions should have been explored. The descriptions in the "compaint" addressing these

matters were never disproven by the defendants - had the defendants conducted hearings on this they would have required expert fact-finding testimony which would be subject to cross-examination. No such hearings were provided. The orders and memoranda themselves are indicative of the concern evidenced by the trial court - both decisions are verbatim, with fourteen cases cited in identical order and wording: Bartholomew v. Fischl, Angelastro v. Prudential-Bache Securities,Inc., Scheuer v. Rhodes, Haines v. Kerner, Stump v. Sparkman, Bradley v. Fisher, Turack v. Guido, Robinson v. McCorkle, Gambrell v. Hess, Pierson v. Ray, Decker v. Hillsborough County Attorney's Office, Maduakolam v. Columbia University, Haines v. Kerner, and Clark v. Green.

Consider that Sullivan was not a municipal judge nor practicing lawyer who tried a water case, while Dinice did not deal with the public defender's office under Koblitz who was now sitting on the superior court with Sullivan - the different circumstances produce different fact patterns requiring separate treatment.

FACTS

JURISDICTION

The jurisdicitonal statement of the complaint is fifty seven pages long and attempts to treat the subject matter jurisdiction thoroughly by evaluating the cases which have preceded the filing of the three federal companion cases [Moretti v. Dinice and Sullivan, D.C.93-528 (JCL), Moretti v. Zisa, et al., D.C. 92-4206(HAA), and Moretti v. State of New Jersey, et al., D. C. No. 93-5577 (JWB). The first matter of note is the economic comment at p. 1 wherein the $25,000 per year real estate tax for the apartment house is noted as subject to tax appeals in 1978, 1979, 1980, etc., with no results. The assessed value still increases $543,000 to over $750,000. The water shut-off case at p. 2-9 stresses the emergent applications requiring personal appearances. The water controversy was included in the first federal case filed, Moretti v. Zisa, et al., filed on October 6, 1992. That case was dismissed, without trial, without discovery, and is on appeal.

The City of Hackensack filed a municipal complaint against plaintiff-appellant and prosecuted the case for five months (August 1992 - December, 1992) in the municipal court, State v. Moretti, C-92-2916, C 92-2940, C-92-S426599.[Complaint p. 32]

Plaintiff-appellant filed a case entitled Moretti v. Alexis, Hackensack

Police Dept., and Hackensack Fire Dept., Docket No. DC-700124-92. [p. 16 of the Complaint]. That case was dismissed in the opening moments of trial as soon as the main witness, Morrissey, was called to testify.

Plaintiff-appellant included cases dating back to the case of Moretti v. Hollis, et al. L-48567-79 [Complaint p. 22]. This 1979 case is a legal malpractice case in which Hollis was suspended from the practice of law due to his not serving the summons and complaint on the defendants. Hollis was one of a dozen lawyers who was consulted in the 1970's relating to the operation of the subject real property at 391-397 Park Street, Hackensack, New Jersey.

The Stedtler matter involved an arrest on premises and incarceration at the Bergen County Jail Annex. Two arrests were involved, the first in May, 1992 and the second, October 1, 1992. [Complaint p. 34-55]. Note is made that Stedtler was one of many tenants introduced under subsidy support by the Bergen County Board of Social Services, and two prior tenants, Price and Jones, were arrested and/or incarcerated in the jail annex prior to Stedtler's tenancy. At issue is whether these tenants were lured to the property by free rent, only to discover that jail several blocks away was made freely available to them. The procedural history notes that Judge Sullivan did not give 'proper consideration' to a statutory affirmative defense that might be available to Ms. Stedlter at her trial

- i.e. that the statute N.J.S.A. 2C:35-7 provides that affirmative defenses be included in cases where there is arrest in the home - 397-D Park Street, Hackensack. The statute reads in pertinent part,(Fn.1). While the defendants claim that absolute immunity protects the defendants, such immunity obtains during trial. The facts above unequivocally state that a multi-year residential setting is involved in which administrative over-sight is replacing property management. [Complaint p. 1: "The city's response is smoke alarm drills, police checks, and health citations, which are of an emergency nature and hence provide no long term relief. Responding to daily emergencies...all but eliminates daily maintenance." At p. 2 "Long term investment in competent housing maintenance is replaced by a preference for filing summonses for insignificant repairs, substituting municipal oversight for competent onsight management.] Absolute immunity is limited to the advocacy of lawsuits, only qualified immunity applies to long-term administrative or investigatorial activities. Clearly, the defend-

1. "It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person 17 years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve distribution, dispensing or possessing with the intent to distribute or dispense any controlled dangerous substance analog for profit."

ants are the beneficiaries of a grant of absolute immunity which is unbounded by judicial proceedings, in which barking dogs take the place of depositions, burning buildings take the place of cross-examination, psychiatric halfway houses take the place of confrontation of adverse witnesses, bounced rent checks take the place of testimony, and smoke alarm alerts take the place of summing up to the jury.

In contrast to the view of the defendants, plaintiff-appellant sets forth the jurisdicition of the federal court to be the federal civil rights law 42 U.S.C. Sections 1981, 1982, 1983, and 1985, which offer federal protection from state action which deprives citizens of their constitutional rights.

Many other cases occurred covered only in passing in the complaint. For example, the burning of 111 Passaic Street, Hackensack on March 10, 1978 [Complaint p. 24] involved a multi-year nuisance in which tenants were forced to abandon their bedrooms as a barking dog barked from 8 p.m. to 6 a.m. at that address. The occupants of 111 Passic Street formed a boisterous group, and attempts to secure peaceful solution were unsuccessful. Fights broke out. One tenant who jogged by was assaulted by a person in the immediate vicinity. When the house finally burned down after two years of constant uproar, the residents of Park Court Apartments gathered silently and looked on as the fire department doused the glowing embers that once was a

house.

Two years later 370 Park Street (a 72-unit apartment house) was constructed, In the 1990's the building was plagued by smoke alarm alerts sounding for six hours at a time [Complaint p. 1]. The complaint sets forth the reason that superintendants could not be hired - they simply walked off their jobs or refused to work at the site. Repairs were manufactured by tenants who sought to reduce rents through a multiplicity of "code violations" - violations fabricated by tenant-negligence. Smoke alarm alerts resulted in the building being sold back to the adjacent law office which constructed the apartment house.

The failure of the state court system to remedy these matters resulted in the filing of the three federal companion cases. Their dismissal within a few months of their docketing without discovery, or oral argument, has resulted in three appeals to the Third Circuit Court of Appeals.

## FACTS

### THE DISPUTE AS TO DINICE

The complaint documents the refusal of Dinice in the Hackensack municipal court - at issue is whether he acted as a lawyer or a judge since he is a practicing lawyer and he acted in lieu of the public prosecutor - to consider whether the quantity of water was consumed as alleged by the municipality and its employ-

ee, the Hackensack Water Company. The water company is listed in the New Jersey Law Manual for the past several years as being in charge of "water searches." Other municipalities use the engineering department or the town assessor for this, thereby providing an internal auditing system to check on the water bills being served on its residents - not so Hackensack. Plaintiff-appellant provided to the municipal court eight comparables showing the consumption of water adjusted for twenty units. Annual gallons consumed ranged from 700,000 to 1,400,000 for these comparable, with costs from $2,150 to $4,285. By contrast, Park Court Apartments, the subject property, was billed annually $7,451 for 2,461,000 gallons, double the sample. With an on-site office which could correct for plumbing emergencies producing waste, there is no explanation for this inconsistency.

When Dinice is confronted with this billing dispute, he does not consider it, and suggests that he may do so and enforce an illegal bill which is already before the superior court law division and on remand from Appellate Judge Kestin. Indeed plaintiff-appellant's arrest was in court while addressing the Judge Fitzpatrick court - clearly a fact issue to consider as to whether Dinice acted outside his jurisdiction. Dinice's comments about the billing dipute follow: (T9-3)

"Quite frankly, I con't care if you have a bill dispute with the water company. I only care that you provide water."

Upon the advise of the prosecutor, Dinice suggests seizing the rents in order to pay the water bill.
(T1.22-8)
The Court: I had suggested various ways the City could go about this. One of the ways I suggested the City go about it, that he's receiving rent subsidy from the county. Why should he get this money on a monthly basis and the city have to pay the water bill?
Mr. Amoroso: Well, the City Attorney, Judge, would move for a rent receiver. That would be the City Attorney's responsibility, to move for a rent receiver and begin.
The Court: Well, why don't you coordinate that with him?

Plaintiff-appellant draws into controversy the bill dispute with Dinice as follows:
(T1.24-25)
Mr. Moretti: I think it's an issue of a fraudulent bill.
The Court: It might be. But it's not an issue for this Court.
Mr. Moretti: It's a fraudulent bill which charges $10,000 in the --
The Court: I don't want to hear about that.
Mr. Moretti: --last few months --
The Court: I don't want to hear about that.

Plaintiff-appellant suggests to Dinice that if the city is genuinely interested in the welfare of the tenants (who cannot pay inflated rents based upon the number of non-payment of rents suits

which have been filed - about fifty) it should have filed legal action against the water company, not plaintiff within.
(T1.27-1)
Mr. Moretti: If the water company was proceeding as an independent contractor, it would be sued by the city for shutting off the water.

Dinice denies this responsibility. He claims that he need not consider the billing dispute at all, but rather merely decide to prosecute on behalf of the water company.
(T3.10-9)
The Court: I will not take into consideration what you owe the Hackensack Water Company...even if you've been bilked by the Hackensack Water Company. I don't care...You're the landlord. You're responsible.

Dinice denies discovery. He states at T1-15.21, "there's no interrogatories and I'm not going to permit interrogatories, all right?

Dinice denies pendent jurisdiction with the superior court as despite the prior filing in the superior court of Moretti v. Hackensack Water Co. and Board of Regulatory Commissioners, Docket No. BER-L-8191-92, nor of his interruption of proceedings while on remand from the appellate division as follows:
(T26.2)
The Court: I think he's got a case pending in Civil Court against the Hackensack Water Company...
Mr. Moretti: You're well advised of that. I'm sure you've received a copy of the

motion papers that are returnable in nine days.
The Court: In the Superior Court.
Mr. Moretti: In the Law Division, yes.
The Court: Yeah. Well I have nothing to do with that.
Mr. Amoroso: The Attorney General was here earlier on that today, judge, and advised me that it was going to be dismissed or is dismissed...
The Court: I don't want to hear about what's going on in the Law Division and Appellate Division, All right? I'm going to decide whether you provided water to the tenants.

When plaintiff-appellant examined Fasciano from the water company, the testimony was as follows:

(T3.6.19- Vol 3, p. 6, l.19)
Q: If you take a look at the list for the amount of water consumed (which Fasciano provided the court), can you read the gallonage for the last seven quarters?
A: Yes...
Q: That's eight hundred and nineteen thousand gallos.
A: Yes.
Q: Yes. Next?
A: The next, four fifteen eight eighty-eight, the following, four twenty-five six one two, the following one million two ninety-eight five twenty-eight, the following three twenty eight ninety-two.
Q: All right. Just looking at the last two that you just read, one million and three hundred thousand, would you say that's approximately a multiple of four to one ratio exists between those two months, betwee, those two quarters?

A: Approximately.
Q: Okay. And if you take a look at your number four hundred thousand gallons and eight hundred thousand gallos, is that approximately a ratio of two to one?
A: Approximately, yes...
Q: Is that for three full years, thirty-six months?
A: This exhibit?
Q: Yes...
A: Yes...
Q: When you made that (exhibit) up, when you produced that certification did you take note of the amount of water being billed for?
A: Yes...
Q: Would it be approximate, as you look at it, to say that it's six million gallons?
The Court: It sounds right. Go ahead, next question.
(T3.9.9)
The Court: So far, Mr. Moretti, you're wasting the Court's time, so far. You're wasting time, And I'm going to allow you five more minutes of wasting time and then I'm going to cut you off, all right?
(T3.10.11)
The Court: What relevance is all these questions? You know, I'm going to assess you costs in this case because I think this witness' testimony and the questions you're asking this witness are totally irrelevant to the charge before this Court. What you owe the Hackensack Water Company has absolutely no bearing on this case. And I will not take into consideration what you owe the Hackensack Water Company or whether you think you've been overcharged by the Hackensack Water Copmpany, or even if you've been bilked by the Hackensack Water Company. I don't care."

Based upon Dinice's continuing

objection to consider any testimony relating to the responsibility of the water company to bill only for water consumed (pursuant to the N. J. Stat. Ann. 48:19-18.1 - "any bill or other statement presented by a person, firm, association, corporation, authority or governmental unit to a customer for water sold or supplied shall have the amount of water sold or supplied stated thereon in gallons or shall indicate thereon othat 100 cubic feet of water equals 748 gallons."), Dinice finds plaintiff-appellant guilty, and imposes a fine of $500. Parenthetically, Dinice states at T510.9: "What I'd really like to do is I'd like to put you in a room, Mr. Moretti, an apartment for two weeks without water yourself. And then I'd like to see what you would do. But I don't have that power to do that. But that's what I would really like to do, all right? But I'm going to fine you $500, $25 costs." When plaintiff-appellant states that he intends to appeal and requests a stay of the fine due to financial difficulties, Dinice responds as follows:
(TV.14.5): "Now I've incarcerated you because you refused to tell me when you're going to pay the $525, Mr. Moretti. And you continue to refuse to tell me. So I'm going to ask you one more time. If you don't answer my question I'm going to sentence you to 45 days for contempt of court. So tell me, when do you anticipate paying the $525?" Unsatisfied with the answer, Dinice orders: "Forty-five days in the County Jail. Take him into custody." Plaintiff-appellant states that he has a court

appearance in the Superior Court Law Division to attend, whereupon Dinice states (TV.14.23) "I think you're going to be late."

How does Dinice explain that in one quarter 300,000 gallons can be consumed, in another quarter 1,300,000 gallons consumed, in yet another quarter 800,000 gallons. This variation is not reflective of the fact that with only twenty apartments each with but one toilet, one bathroom sink, and one kitchen sink, there is very little variation in water consumption. There are no outdoor watering facilities, since all outside faucets were permanently shut down six years ago. There is no lawn sprinkling system. There is no pool. Adjacent properties do have sprinkling systems, but they pay their bills, while plaintiff-appellant assumes he is not paying their bills.

The complaint details many other hearings before Dinice, which include extermination trials, odor (Beavers) trials, door-closer hearings, etc. In the case of the exterminator matter, Dinice upon finding that the tenant was not in court telephoned the Bergen Pines Psychiatric Ward in order to elicit testimony from her relevant to the case. That tenant left her apartment after three years, but her interrogation continued even after she vacated her apartment in 1992. The following four tenants in that apartment remained less than four months each, despite the one year lease terms at the apartment house. The rents charged in 1989 are higher than the rents charged

five years later in 1994. No tenant residing at the building in 1991 is still residing there, despite the fact that tenants residing there in 1991 moved in as long ago as 1985. The turn-over rate has increased dramatically, in an area in which tenants customarily resided for two and three years, they now reside there less than one year. Rents are $100 per month less in 1994 than they were in 1990 at both 370 Park Street and 391 Park Street (comprising 95 apartment units).

At issue is that the residential living conditions referred to in the jurisdictional statement are not the stuff of court proceedings which are necessary to support the claim of absolute immunity. Absolute immunity is conferred when there is prosecutor independence, legal counsel for both sides, and hearings in which cross-examination and expert witnesses are allowed to testify. By what stretch of legal reasoning does that apply to either of the defendants here. The inter-position of Dinice in the numerous cases cited show just the opposite. When Mandeville was asked by Dinice what the cause of odor was in the Beavers complaint, this health department representative stated she had no knowledge of where it came from. In fact, the three bounced checks conferred jurisdiction to special civil part, and the fining of plaintiff-appellant by Dinice was a void act.

Space limitations prevent further amplification of this in this section, but details can be supplied.

## THE FACT DISPUTE AS TO SULLIVAN

The bases of the dismissals as to Dinice and Sullivan are that there is no genuine issue of material fact to support the complaint. The claims by Dinice have been addressed in the foregoing, resulting in the conclusion that as far as Dinice was concerned, he did not accept facts, hence he presumed that testimony on facts was a "waste of time."(T3.9.9) The example of this "waste of time" in Sullivan's case was the release of Stedtler before trial, and allowing for the appointment of defense counsel.

The admission by the arresting authority is that only several hundred dollars of drugs was involved. This conforms to the statutory requirement of N. J. S. 2C:35-7 that profit was not involved. Repeating the statute, it states as follows:

> "It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person 17 years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve distribution, dispensing or possessing with the intent to distribute or dispense any controlled dangerous substance analog for profit."

The October 3, 1992 press release by the Hackensack Police department through its chief of police Aletta was that only several hundred dollars of drugs was involved.

The October 1, 1992 arrest followed the August 13 water shut-off in which Dinice not only allowed the water company to shut off the water, but the state court system refused to intervene on behalf of plaintiff-appellant to prevent that shut-off. Hearings before Judges Murphy, Eichen, Fitzpatrick, Kestin, Van Tassle, DeCordova, and others proved unproductive. While Dinice opines that there were steps to be pursued which would have kept the water on during the billing dispute, he did not specify what steps he referred to. Had he referred to an interim payment, two such payments totaling $6,000 were offered, but the water company demanded $9,300 immediately. Tenant evictions proceeded under the relevant statutes, but were unproductive in increasing rental income - the theory that there is an unlimited number of tenants to fill vacancies is not consistent with the realities of residential living.

In the case at bar, the Bergen County Board of Social Services subsidy payments were withdrawn unexpectedly from Stedtler on the basis that an over-night guest had stayed with her. A December 13, 1991 subpoena confirming same was served on plaintiff-appellant, who could not substantiate this deviation from subsidy rule (allowing Marica Mitchell in her apartment). The SSI recipient came several months after the arrests of Jones in one apartment and Price in another. Both were B.C.B.S.S. subsidy recipients, and that agency had failed to disclose any prior convictions as to this new

tenant the failure of appointed counsel from the Public Defender Office of Bergen County began with the resignation of Michael Ravin, Esq. after his first court appearance [June 19, 1992 letter: I am in receipt of your letter dated June 16, 1992. I no longer represent... Stedtler. I suggest you direct your questions to the office of the Bergen County Public Defender (s) Michael L. Ravin.] A series of additional public defenders stood by as the former tenant was transported from the Bergen County jail annex to the court house several times. The public defenders' office insisted that Ravin was handling the case, but Ravin claimed otherwise. Linda Biancardi was presumably handling the case, but she refused to contact plaintiff-appellant with respect to the fact pattern addressed within this brief. Even after consulting with her in the county courthouse she refused to address the issue of defense or alibis.

Recognizing that this tenant could not consult with her lawyer and that she was being held in a temporary jail facility under primitive living conditions, plaintiff-appellant paid her bail after consulting with her family. She returned to her former apartment but with the continuous demands for money by Dinice and the water company she was required to abandon her apartment. She could not afford the rent when there was no water, gas or electric. Dinice continued to insist on paying off the $9,300 water bill to reinstate water. The excessive real estate taxes of $550 per week cut into maintenance and services, resulting

in ownership having to contribute plumbing and other labor. Plaintiff-appellant attempted to speak to the prosecutor on this matter, as he had as to the psychiatric halfway house next door, (387 Park Street), and the boarding house at 111 Passaic Street (both demolished), but to no avail. Plaintiff-appellant occupied an office on-looking the Stedtler apartment, and he perfomed several repairs in that apartment upon move-in and the ensuing months. Neighborhood conditions had been blighted due to the unending series of smoke alarm alerts at 370 Park Street producing much traffic from that building. Although there were children in three adjacent shools, that mattered little in the creation of neighborhood nuisances such as the psychiatric halfway house at 387 Park Street or 111 Passaic Street, or the endless fire trucks lined up in front of 370 Park Street.

Plaintiff-appellant visited the public defenders office at 60 State Street, Hackensack, a few blocks from the apartment site, seeking to speak to Deputy Ellen Koblitz, the head of the office. She was never available. Letters and motions addressed to her were never answered, telephone calls were not returned. On June 16, 1992 he wrote to that office stating that since Ravin was not defending her he "would like to know whom Ms. Stedtler may expect to consult with and under what circumstnaces said consultation may be arranged to be most favorable to her cause of action." After numerous letters and motions addressed to

Judges DiGisi, Gaeta, and Sullivan, there was no relenting as to the assignment of counsel. An ensuing federal habeas corpus appeal and a state habeas corpus appeal were filed.

Were it not for the appointment of Ellen Koblitz as presiding judge of special civil part in March, 1993, plaintiff-appellant would never have met her. Her former defense lawyer background gave her the opportunity to rectify any perceived wrongs of which she was advised. Her first case was the Hackensack Water Company matter, now filed in special civil part as a bill dispute, Docket No. DC-705907-92. She reversed Judge Polito's denial of defendant's motion for summary judgment and granted that motion finding for the defendant in the amount of $6,655.11, the order being filed April 22, 1993 [$6,655.11 + (Ch) $2,950 = $9,605.11]. In addition she awarded the Bergen County Board of Social Services $2,070.40, in the case of Moretti v. Fields and Bergen County Board of Social Services, Docket No. DC-4327-93, under the frivolous litigation statute. The suit was believed to be frivolous under the old standard (since declared illegal by the New Jersey Supreme Court) in which after one year public benefits could be terminated. The tenant remained in her apartment but the BCBSS denied her continued subsidy - Judge Polito denied eviction based on Dan Cronin's (from Bergen County legal service) representation that word would arrive shortly on the "fair hearing" application to Trenton. The third case worthy of note involved a tenant at 390 Park Street (a

private home) who had applied for an order to show cause to enter that house, although he was thirteen weeks behind in rent. Among the reasons for his non-payment was that he was not able to secure legal remedy as to one Osuji and others who allegedly assaulted plaintiff-appellant. Despite the statutory exemption of single family owner-occupied homes Koblitz signed the order on November 12, 1993, LT-9533-93.

Consider that this was Stedtler's defense counsel. Since none of the cases went to trial, and all were decided on motions in which testimony was neither allowed nor taken, the nature of her legal representation and of Judge Sullivan's determination of guilt are brought into doubt (Sullivan kept Stedtler in jail for one year until she confessed in order to get out of jail - the punishment preceded the conviction. Plaintiff-appellant advised the state judicial advisory board due to successive government and private representation (Rule of Professional Conduct 1.11), conflict of interest - former client (RPC1.9), imputed disqualification (RPC 1.10), frivolous litigation (N.J.S.A. 2A:15-59.1), etc.

In light of the fact that Stedtler was incarcerated on January 22, 1992, four months before her arrest [Stedtler wore an orange BC Jail jumpsuit at a hearing on LT-042052-92 on January 22, 1992] plaintiff maintains that the within action involves long term investigatorial excess not protected by absolute immunity.

THE ARGUMENT

POINT ONE

JUDICIAL IMMUNITY PROTECTS NEITHER DINICE NOR SULLIVAN UNDER THE FACTS WITHIN.

The Deputy Attorney General describes plaintiff-appellant as a would-be lawyer offended by the judicial system. The opposite is true, Dinice appears to be a judge offended by the business system who sought to change same, and thereby interfered with Sullivan's case. Koblitz also wears two hats, lawyer and judge, and by so doing highlights the error of Sullivan in considering the subject neighborhood as a "school" neighborhood. A burning boarding-house, a psychiatric half-way house, and two hundred fire drills converted this area prior to the entry of Sullivan and this "drug" case. The DAG below relies upon Sturm v. Clark, 835 F. 2d 1009 (3rd Cir. 1987) for the applicable law under Fed. R. Civ. P. 12(b)(6). That case involved a lady lawyer practicing in Allenwood Prison. At issue were prison security versus legal protection. At issue was whether this lawyer could be kept away from her client a full day while other lawyers had quicker access. The appellate court remanded.

To substantiate the proposition of judicial immunity, the Deputy Attorney General cites Briscoe v. LaHue, 103 S. Ct. 1108 (1983). That case involved a Section 1983 challenge to police officers who were called as witnesses. The ratio decidendi in that case is that police officers called to trial in cases are allowed qualified immunity since their major experience is "on the street." The

dissent by Justices Marshall, Brennan, and Blachmun evaluate the far broader issue of judicial immunity and immunity at trial of witnesses. As Justice Marshall notes at 103 S. Ct. 1108, p. 1122 "absolute immunity nullified 'pro tanto' the very remedy it appears congress sought to create...As the sponsor of the 1871 Act, Representative Shellabarger, declared: 'This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such statutes are liberally construed. It would be most strange and, in civilized law, monstrous were this not the rule of interpretation.'"

As to the applicability of the civil rights laws to judges, Justice Blackmun writes (p. 1128) that, "This Court has from time to time read Section 1983 against the 'background' of common-law tort liability. Far more pertinent to this case, however, is the background provided by the 1866 Civil Rights Act. Representative Bingham, who had introduced the amendment to substitute civil liability for criminal liability in the 1866 Act, had become chairman of the House Judiciary committee by the time of the 42nd Congress. Senator Trumbull, the Senate sponsor of the 1866 Act, was chairman of the Senate Judiciary Committee in 1871. Representative Shellabarger, who had participated in the debates on the 1866 legislation, drafted the 1871 Act...Of all the measures in the Ku Klux Klan Act, Section 1 generated the least controversy since it merely provided a

civil counterpart to the far more controversial criminal provision in the 1866 Act."

Justice Marshall notes that legislators are not similarly liable since they act under the Speech and Debate Clause of the Constitution.

The DAG claims that "it is beyond dispute that Judge Sullivan, as a New Jersey Superior Court Judge, had authority to preside over the judicial proceedings mentioned in the complaint." This is not so. The so-called arrest occurred within the same city and within one mile of the judge. The tenant could have been lured to the site (by free rent) by the very individuals who would charge the defendant with a crime. Consider the relative ease of securing a search warrant from Dinice. These two judges literally control the commission of the crime by being within a few blocks of the crime site, and by establishing multple criteria for life at that site - broken toilets, loud parties, fights, etc. Consider the location within 1,000 feet from three schools (N.J.S.A. 2C: 35-7) - does the statute envision a person lured there by free rent and authorities who have arrested Jones and Price within 60 feet weeks before her move-in? Does the statute speak to the apartment over-looking a psychiatric half-way house or a burning boarding house? A motion hearing would have decided these issues, but no such hearing conducted by Koblitz' public defenders could represent the tenant due

to her bias advertised by becoming presiding judge of the special civil part.

While Dinice throws the tenant out on the street, Sullivan picks her up and puts her in jail "where she belongs." Even when Dinice and Sullivan have associates explain what is going on in the proceedings, they mis-understand the case because of the inadequacy of appointed counsel. Note the way in which Dinice cannot accept the blame-worthiness of the water company or its status as a legal entity even with the advise of his prosecutor (both Dinice and Amoroso are judge and prosecutor in South Hackensack as well).
(T 9-3)

Mr. Amoroso: There is a contract, Judge, between the City and the Hackensack Water Company for water services to be provided pursuant to rules promulgated by the Board of Public Utilities...Mr. Moretti draws a conclusion...that there is some agency relationship...which puts you on the same status as a contractor like Hackensack Water Company.
The Court: Is that your argument?
Mr. Moretti: Not really...the argument is there are municipal engineers or tax assessors who act normally as individuals doing water searches just for this specific reason because the bill dispute becomes a third-party action...
The Court: Quite frankly, I don't care if you have a bill dispute with the water company. I only care that you provide water.

What Dinice does is claim to be solicitous toward tenants, but in fact he throws them out of their apartments because they do not have the money to pay inflated rents for water they do not

consume. Interrogatories could have cured this by providing sufficient information so that Dinice could act on behalf of tenants. In fact Dinice said at T1.11-12: "stop speaking about interrogatories. There is nothihng before this Court about interrogatories."

Out of twenty apartments in two buildings, there is no tenant who has been on site for four years or more. The area is populated by homes which give added stability. Business ownership is long term. All residents have been hard-working people. Neither Dinice nor Sullivan are Hackensack residents

Sentenced six months in jail from October 1, 1992 to March, 1993, Stedtler when finally released was so disoriented by her long term incarceration she sued plaintiff-appellant in municipal court claiming theft of money, and harassing phone calls. In fact the tenant had called him on Nov. 8, 1992 (twice-2), 9(2), 11, 12, 13, 14, 15, 16, 17, 19, 20, Dec 4(2), 14, 15, Jan 20(3), 23, 26, Feb. 4, 5, 7, March 3, 4, 7, 9, 10, 12, 13, 15, 17, 19, 21, 23, 24, 25, 26, etc. The police department arrested plaintiff-appellant and incarcerated him in the municipal jail on April 14, 1993 when he went to court to retrieve the transcripts of the August 14, 17, and 26, 1992 water hearing ordered December 13, 1992.

The Deputy Attorney General claims absoloute judicial immunity as to Sullivan, but at issue is whether this averred immunity is in conflict with absolute legislative immunity. As noted in Law of

the Poor by LaFrance, et al., (1973), p. 266:

the protection of the United States Constitution is available to all public assistance recipients, whatever the source of the funds or governmental units administering the assistance program. The protection may vary, of course, depending upon the involvement of one governmental unit or another. The commerce clause and the fourteenth amendment's privileges and immunities clause, for instance, operate as limitations upon the states but not upon the federal government. The first eight amendments, on the other hand, directly restrict only the federal government. However, by a gradual process of incorporation, most of these restraints have been applied to the states as requirements of due process."

Stedtler's abandonment by the board of social services was similar to fellow tenant Fields' termination by social services, upon which plaintiff-appellant wrote in his brief (A-5698-92) at p. 7:

On December 15, 1993, the Supreme Court of New Jersey unanimously overturned the Appellate Division decision [LT v. New Jersey Dept. of Human Services, 134 N. J. 304 (1993) above noted. That opinion reads as follows:

This appeal concerns the rights of persons facing eviction and homelessness to receive extensions of temporary rental assistnace (TRA) under the State's General Public Assistnace Law, N.J.S.A. 44:8-107 to -157 (GA Law). "The [Ga L]aw exists 'to the end that *** person(s) may not suffer unnecessarily, from cold, hunger, sickness or be deprived of shelter***.'" Pascucci v. Vaqott, 71 N.J. 40, 48 (1976)(quoting N.J.S.A.

44:8-122). TRA provides a twelve-month rent supplement to eligible GA recipients to prevent homelessness. The case arises from the respondent's refusal to continue TRA, in essence, forcing the eviction and consequent hoemlessness of these claimants. The question in this appeal, most broadly stated is whether the Legislature intends that administration of the GA Law, by setting a twelve-month expiration period for TRA, should result in the homelessness of the very persons whom the law is intended to shelter. We think not. We therefore direct that the agency continue TRA for individuals facing homelessness to the extent of available appropriations, unless it identifies another governmental agency or program that will provide shelter for such persons.

The Fields case, OAL DKT. No. HPW 62-93, resulted in denial to Fields of a one year extension "on the basis of the hearing record, [which] found that the client has been granted 12 months of TRA which equals or exceeds the maximum period for such assistnace permitted by the governing regulations." While Koblitz awarded $2,070 to the BCBSS under the frivolous litigation statute, homelessness is not frivolous to those so rendered, and this is reflected by the state Supreme Court decision.

Note Koblitz was charged with rendering legal assistance to Stedtler on the basis that she believed that termination of subsidy assistance should be treated as final. Since Fields was similarly situated, should not consideration be given to the plight of Stedtler cut off from benefits in November, 1991? How did Sullivan consider this when "housing" Stedtler in jail for one year?

Given that Stedtler occupied an apartment when she was initially arrested, compare how her lawyrer, Ellen Koblitz, deputy head of the public defenders treated the invasion of a private residence when she became judge Ellen Koblitz in March, 1993. Legal aid filed an order to show cause in the case, Fayehun v. Moretti, a tenant thirteen weeks behind in rent ($845) to re-enter 390 Park Street, a private home occupied by plaintiff-appellant. The applicable statute is N. J. Stat. Ann. 2A:18-61.1 which reads as follows:

The Superior Court had jurisdiction over evictions from premises **other than (1) owner occupied premises with not more than two rental units...rented to a transient guest.**

Despite the exclusionary language of the statute, Koblitz signed the order of legal services on an ex parte basis, which provided as follows:

**ORDERED that tenant may reenter room 2 at 390 Park St., Hackensack pending this hearing. ORDERED that a copy of this order be delivered to the plaintiff prior to reentry and in no event later than Monday, 11/5/93. ORDERED, that the Hackensack Police Department assist him in service of these papers and the re-entry of the apartment (sic) if necessary.**

Did Koblitz use the Police to enter Apt. 397-D illegally to get a conviction, when the illegal entry into 390 Park St. was 100 feet away. Note the inconsistent use of state statutes, protecting children (within 1,000 ft. of a school), but not protecting the home (390 Park St.).

Although the federal civil rights laws give federal jurisdiction to hear Moretti v. Dinice and Sullivan, complaint as well as the other two companion cases, all were dismissed under Fed. R. Civ. P. 12(b)(6) - lack of any fact dispute, is it not possible that Koblitz' showed bias both as a lawyer and judge? Fn.2

Fn. 2.
Plaintiff-appellant filed a complaint in special civil part on August 20, 1993, DC-012915-93, (tort case with jury demand) in which he alleged that "at 6:45 p.m. on Saturday June 19, 1993 I was standing in the front of 391 Park Street, Hackensack, when I saw a car driving at high speed turn the corner and travel south from Passaic Street onto Park Street. The car swerved toward the curb but remained running with the driver's door wide open as the driver exited from the car which swerved and shrieked to a halt. The driver jumped out of the car, ran around the back of the car and approached the curb. The driver then shouted obscenities, physical threats, and seemed to be cursing in a mad way. I had not seen this person before. As I turned around, he kicked me in the groin. He then pulled out a small bat and hit me in the head with the bat, which was pointed at one end so as to pose a threat from punching the eye out. When I put up my hands to fend off the attack, the actor/driver of the car stated that he was going to get something from the car to continue the attack. He then went to the back of the car and opened the trunk. As he did so, complainant telephoned the police. The driver fled the scene. When the police arrived, someone identified the vehicle and the driver [Osuji] was traced to the adjacent building, 370 Park Street, Hackensack...

When the attack by Osuji occurred, plaintiff-appellant was talking to a roomer from 390 Park Street by the name of Fayehun who had not paid his rent in thirteen weeks. Fayehun apparently was having some difficulty getting paid for automotive repairs he performed for a tenant at 370 Park Street. When this case came on for trial before Dinice on July 28, 1993, Fayehun did not testify as a witness. (Fayehun was treated by Urgent Care for injuries received on July 19, 1993) Dinice claimed a conflict and transferred the case to Saddle Brook. When the case came on in Saddle Brook on October 6, 1993, Fayehun did not appear as a witness again and was not seen for two weeks prior to trial. (Fayehun received injuries on September 21, 1993. Health Net Medical Group - Urgent Care reported that the following injuries were sustained on that day to Fayehun: injured, 5th digit injured during physical altercation was hit on shoulder, 5th digit swollen, neck spasm.)

Dinice, Sullivan, and Koblitz are New Jersey judges. When Koblitz served as defense counsel to Stedtler, Dinice was listed in the lawyers manual as a lawyer. The actions of Judge Koblitz reflect on her prior employment as defense counsel. Sullivan should have provided for effective legal assistance when he jailed a defendant prior to trial for one year. Given that Stedtler was lured to her apartment by free rent, the failure to allow for affirmative defenses constitutes reversible error.

## CONCLUSION

Given the inability of tenants to pay the high rents charged in today's housing market, the exacting of sanctions against the plaintiff-appellant by Koblitz in the cases she heard and by the federal trial court in the matter sub judice requires reversal. Koblitz' decisions in three matters found this party owes $6,655 in the water case, and $2,070 in the Fields homelessness case. The federal trial court found this party owed Sullivan $2,780.50 and owed Dinice $1,613.65. Lost rent due to non-payment by Fayehun amounts to $845 as of Koblitz' November 2, 1993 order demanding re-entry. These sanctions total to $13,964.66, and plaintiff-appellant prays for the removal of said mandates and an order to proceed to trial under the applicable laws.

Date Submitted: June 18, 1994

Submitted By:_____

**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**

No. 93-5581

| | | |
|---|---|---|
| SALVATORE MORETTI, Petitioner | : | ON APPEAL FROM |
| vs. | : | UNITED STATES |
| | : | DISTRICT COURT, |
| | : | DISTRICT OF |
| LOUIS J. DINICE, AND | : | NEW JERSEY |
| TIMOTHY J. SULLIVAN, | : | D.C. NO. 93-528 |
| Respondents | : | |
| | : | |

REPLY BRIEF ON BEHALF OF
SALVATORE MORETTI

Sat Below: Hon. John C. Lifland,
J.U.S.D.C.

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## THE BRIEF
## PROCEDURAL AND FACTUAL HISTORY

Patrick DeAlmeida, Deputy Attorney General, submitted an answering brief to petitioners brief on behalf of defendant Timothy J. Sullivan. Robert Zimmerer submitted an answering brief on behalf of Louis J. Dinice. The within brief is a reply thereto.

The defendants within claim that the appendices submitted were either inadequate in number or content (lacked order for sanctions). Neither defendant contributed to the cost of the preparation of the voluminous appendices submitted, and such appendices as were submitted were in the required number.

The defendants within claim that the the suit within is frivolous, but since no motion hearings were held by the federal trial court in Newark, such an allegation necessary for imposition of sanctions under Fed. R. Civ. P. 11 is disputed. The defendants appear to argue if they are absolutely immune, then suits against them are in bad faith, and hence sanctions automatically follow. The fact that years of appeals may be required under circumstances of tenants forced out of housing under summary dispossess statutes does not disturb them. High tenant turn-over is the gravamen of the complaint within, due to the failure of the state or these judges to provide the services required due to bias, lack of jurisdiction, or refusal to conduct proceedings (e.g. motion hearings, settlement conferences, etc.) wherein they will be advised of the facts at bar.

POINT ONE

FEDERAL ENTITLEMENT TO UTILITY SERVICE REQUIRES THAT DEFENDANTS PROVE THEIR CASE BY AN INTERMEDIATE STANDARD OF REVIEW, SAID REVIEW NOT UNDERTAKEN DUE TO DISMISSAL BY THE TRIAL COURT UNDER FED R. CIV. P. 12(b)(6).

Preliminary Remarks - Dinice

At page ten, Dinice's lawyer claims that there are no related cases pending, ignoring the clear statement of petitioner's brief that there are three companion cases which illuminate one another as to the nature of the civil rights violations alleged, Moretti v. Zisa, et al., D. C. No. 92-4206, C.A. 93-5416; Moretti v. State of New Jersey, et al. D. C. No. 93-5577, C.A. No. 94-5171, and the case at bar. Why should he ignore the other two cases, while claiming that he has researched the nature of the claims?

Dinice claims that petitioner can prove no set of facts which can survive a Fed. R. Civ. P. 12(b)(6) challenge. Petitioner claims that an entitlement exists for utility (and municipal) services at the residential apartment house property located at 391 Park Street, Hackensack, N. J. This entitlement is recognized by the federal courts, and proof that the entitlement does not exist is upon the opposing party - Dinice. Quoting from a 42 U.S.C. Section 1983 challenge to the shut-off of water service in Philadelphia, Pennsylvania, Ransom v. Marrazzo, 848 F.2d 398 (3rd Cir.

1988)[the facts there are distinguishable in that the "owners" inherited the property],(p.409)

It is well-settled that the expectation of utility service rises to the level, articulated in Board of Regents v. Roth, 408 U. S. 564, 577, 92 S. Ct. 2701, 2709, 33 L.Ed.2d 548 (1972), and Perry v. Sinderman, 408 U.S. 593, 602, 92 S.Ct. 2669, 2700, 33 L.Ed.2d 570 (1972), of a "legitimate claim of entitlement" encompassed in the category of property interests protected by the Due Process Clause. Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 9, 98 S.Ct. 1554, 1560, 56 L.Ed. 2d 30 (1978). Accord Koger v. Guarino, 412 F. Supp. 1375, 1386 (E.D.Pa.), aff'd without opinion 549 F.2d. 795 (2d Cir.1977)(holding that "a water user has a legitimate claim of entitlement to continued water service which is a property interest to which the Due Process Clause of the Fourteenth Amendment applies.") As a constitutionally cognizable state law property interest, the interest in receiving water service is subject to the tri-partite balancing analysis of 1) the property interest, 2) the risk of erroneous deprivation, and 3) the government's interest, articulated in Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976) for a determination of what procedural safeguards are due. See Memphis Light, 436 U.S. at 17-19, 98 S. Ct. at 1564-65 (applying the Eldridge balancing approach to find that "some administrative procedure for entertaining customer complaints prior to termination is required to afford reasonable assurance against erroneous or arbitraty withholding" of utility services); Koger, 412 F. Supp. at 1386-89 (determining, on application of the Eldridge test to Philadelphia's denial of water service policy, that due process requires notice and opportunity for a hearing prior to water service termination).

Petitioner claims that the procedural due process required was not complied with, that the municipal judge jailed petitioner while he was addressing the superior court law division, thereby interrupting the court case therein, and that the trial provided by Dinice thereafter failed to be in accord with substantive due process because Dinice was an interested party who wanted payment without any hearing at all - whether payment was due, whether it was due from petitioner or third parties.

Unlike the claims appearing in Ransom v. Marazzo, and the cases cited therein, e.g. Davis v. Weir, 497 F.2d 139 (5th Cir. 1974)(striking down the City of Atlanta's practice of refusing water service to a tenant when the landlord's service bill was in arrears as a violation of the Due Process and Equal Protection Clauses), petitioner herein claims that the City of Hackensack and the Hackensack Water Company are in privity, that the water company does water searches for the city. Further, petitioner within claims that the city has raised his real estate assessment by $543,000 to $792,000, thereby producing a negative cash flow and unjustly enriching the municipality. This was testified to most recently during depositions conducted by Dinice in aid of litigant's rights. Petitioner has worked on site for two decades, and his salary has been reduced thereby resulting in failure to receive a minimum wage, contrary to federal law.

POINT TWO

DEFENDANT SULLIVAN'S REFUSAL TO CONDUCT AN HABEAS CORPUS HEARING RESULTED IN A JUSTICIABLE CONTROVERSY, SAID CONTROVERSY NOT DISMISSABLE UNDER FED. R. CIV. P. 12(b)(6).

Sullivan's lawyer also claims that he is unaware of any related cases, thereby excluding the cases petitioner filed in federal court against Zisa et al, and the State of New Jersey, et al. Both defendants appear unaware of the nature of civil rights claims, and therefore fail to evaluate the nature of petitioner's claims within. The statement by Dinice that the charge against petitioner is quasi-criminal suggests that this would be a federal appeal from said charge (the water bill).

Contrary to the flattering statements made by the defendants' lawyers about the immunity of state trial judges, the truth is that removal of national cases to the federal courts is required, and the major removal techniques, the federal civil rights statutes and habeas corpus, must be considered. Petitioner filed a habeas corpus petition on behalf of Stedtler, tenant in 397-D Park Street, Hackensack, N. J., in both the state and federal trial courts. Petitioner also filed civil rights challenges to the long term cash flow losses resulting from the high real estate assessments and lack of municipal services in Hackensack. Amsterdam treats these two techniques of securing relief in his University of Pennsylvania Law Review article, "Criminal Prosecutions

Affecting Federally Guaranteed Civil Rights: Federal Removal and Habeas Corpus Jurisdiciton to Abort State Court Trial," April, 1965, vol. 113, p. 793. The history of federal jurisdiction is important since the defendants herein treat it as though it is confined to street demonstration in soutern states, and has no application to the facts sub judice.

As a result of the War of 1812, congress passed a customs act for removal of suits to the federal courts. In 1833 congress enacted the Force Act to oppose South Carolina's opposition to the tariff - federal troops were dispatched to put down resistance by the states (p. 806). The habeas corpus jurisdiciton was enhanced in 1842 to effect release of foreign nationals held under state law, occassioned by People v. McLeod. The Civil War congress gave the president power to put down the rebellion against federal authority. In the 1860's extensions of federal civil rights were granted by congress, even over President Johnson's veto. The second and third civil rights acts were passed by 1870 (p. 826).

The cause for preference of federal over state trials was that remedies were without cure for the ills complained of.

## POINT THREE

**THE DEFENDANTS DINICE AND SULLIVAN ACTED THROUGH THE CONTEMPT POWER - SINCE THEY WERE PROSECUTOR AND JUDGE IN THEIR OWN CAUSES OF ACTION, THEIR PROCEDURES DO NOT COMPORT WITH THE FOURTEENTH AMENDMENT INCORPORATION OF FEDERAL GUARANTEES.**

Both Dinice and Sullivan view jail as the logical alternative to defiance of their orders. Judge Sullivan wants Stedtler to confess guilt, and holds her in jail until guilt is confessed. Dinice would hold petitioner in jail until the fine is paid. Dinice ignores financial hardhsip caused by the city's over-assessment, and instead merely supports the water company. He refused to consider the possibililty of fraud, and jailed petitioner without hearing **three times**, the final time due to contempt - not receiving the fined money. Note Judge Dinice's sarcasm in the remarks that follow:

[T5.9 et seq.]

Moretti: And this bill--

Judge Dinice: Game's over...(T5.11) See, what I'd really like to do is I'd like to put you in a room, Mr. Moretti, an apartment for two weeks without water youreself. And then I'd like to see what you would do. But I don't have that power to do that. But that's what I would really like to do, all right? But I'm going to fine you $500., $25 costs. Naturally, you know you have twenty days in which to file an appeal. If you do not file an appeal within twenty days your right to file an appeal will be barred without special leave of this Court or some higher court. Please pay the clerk.

Moretti: Very well. I'd like to appeal.

Judge Dinice: Plase pay the clerk the fine and naturally you'll have twenty days to file an appeal. Are you going to pay the fine today?
Judge Dinice: [T5.12.13] Are you going to pay the fine today? [T5.12.15] When are you going to pay the fine?
Moretti: I have to make a determination of that?
Judge Dinice: Sit right there, You're under the custody of the Court. Right there. Sit in that arm chair. While you're making your determination I might contemplate putting you in jail also. [T5.13.2]
Moretti: I object to the refusal of the Court to try my counter complaint. [T5.13.10]
Judge Dinice: When are you going to pay the fine? You better give me an answer, otherwise I'm putting you in jail...[T5.13.22] I'm asking you one more time. When are you going to pay the fine?
Moretti: I can't answer that question.
Jundge Dinice: Take him into custody...[T5.14.14] Forty-five days in the County Jail. Take him into custody.
Moretti: Your Honor, I have an appearance in Superior Court Law Division within twelve hours
Judger Dinice: I think you 're going to be late.

Given the delaying tactics of the water company ("the P.U.C. has original jurisdicition, no other court has jurisdiction"), and the insults of Dinice, nothing can be accomplished within the municipal court. Dinice even dragged petitioner out of the law division and placed him in jail, thereby eliminating superior court as an alternative.

## Trial of Contempt By a Neutral Magistrate

Both the finding of contempt by Dinice, with the sentence of 45 days in jail consequent thereto in the water company trial (Dinice) and the jailing of Stedtler for six moths without trial in the drug case (Sullivan) should have been tried by a neutral magistrate. Clearly, Dinice is not a neutral magistrate, and the inference is that with Stedtler constructively evicted due to the water shut-off, Sullivan is also not a neutral judge.

What these two cases have in common is that they are trials of unpopular causes. The water utility is generally paid by landlords in Hackensack's apartment houses, but the tenants have the power to use abnormally large amounts of water. The judge wishes to appeal to tenants, who comprise a large voting block. Sullivan wishes to try a drug case which has high visibility, but he uses the "within 1000 feet of a school" clause in the statute despite the placing of Stedtler in that location by a subsidy agent. He also discounts the actions of Dinice who allows the water company to shut-off the water, thereby evicting Stedtler who by this time has no utilities at all. Dinice's threat to put petitioner in an apartment with no utilities is visited upon Stedtler, who is then jailed by Sullivan until she confesses.

There is a rich case law dealing with contempt which the defendants' lawyers ignore, prefering to quote cases

dealing with judicial immunity, an immunity which attaches only when there is a trial, a prosecutor, a jury, legal representation, discovery, and all the accompaniments of legal proceedings. Such immunity does not attach in the matters sub judice.

Mayberry v. Pennsylvania 400 U.S. 455 (October Term, 1970) involves an appeal to the high court of a contempt found by the federal trial court relating to prison disruption. Given the volatile relationships of prison life, the inmates on trial sought to represent themselves, with legal counsel on hand. They were held to be in contempt for doing so. They were sentenced to contempt for an inordinately long time - eleven years. The Supreme Court reversed the trial court judge, holding that the contempt must be tried before a neutral magistrate. The interchange between the inmates and the judge suggest not so much contempt on the part of the prisoners as desire to try the facts of the case, rather than the etiquette of the court system. There resulted explosive interchanges between the inmates and the judge, such as:

[p. 457]Mr. Codispoti: Are you trying to protect prison authorities, Your Honor? Is that your reason?

The Court: You are out of order, Mr. Codispoti, I don't want any outbursts like that again. This is a court of justice. You don't know how to ask questions.

Mr. Mayberry: Possibly Your Honor doesn't know how to rule on them.

The Court: You keep quiet.

Mr Mayberry: You ought to be Gilbert and Sullivan

the way you sustain the district attorney every time he objects to the questions.

The court had petitioner gagged and placed in an adjoining room until the conclusion of the trial, at which time he was found guilty. of contempt and sentenced to 11 to 22 years.

The majority decision relies upon Judge Taft's decision in Cooke v. United States, 267 U.S. 517, 539 wherein the court holds that,

The substitution of another judge would avoid either tendency but it is not always possible. ...All we can say upon the whole matter is that where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place.

Justice Douglas writes that "whether the trial be federal or state, the concern of due process is with the fair administration of justice. At times a judge has not been the image of "the impersonal authority of law" (Offutt v. United States, 348 U.S. 11, 17) but has become so "personally embroiled" with a lawyer in the trial as to make the judge unfit to sit in judment on the contempt charge."[p. 465]

Hackensack Judge Dinice has become embroiled in a running controversy with petitioner, involving the trial of an "odor case" where petitioner is threatened with arrest if he does not let the health department look into the basement (despite the bouncing of three large rent

checks by the complainant), and the exterminator case where the petitioner's tenant is interrogated while in Bergen Pines psychiatric ward, etc. In the water case, Dinice takes over the prosecutor's job, denies the jurisdiction of the law division in which a lawsuit has already been filed, and asks questions himself after dismissing the prosecutor. Justice Douglas cites In re Murchison, 349 U. S. 133 as a case in Pennsylvania where under state law the judge was allowed to act as a one-man judge-grand jury. [p. 465] "We held that since the judge who sat as a one-man grand jury was part of the accusatory process he "cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused." Id. at 137. "Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer." Ibid. It is, of course, not every attack on a judge that disqualified him from sitting. In Ungar v. Sarafite, 376 U.S. 575, we ruled that a lawyer's challenge, though "disruptive, recalcitrant and disagreeable commentary," was still not "an insulting attack upon the integrity of the judge carrying such potential for bias as to require disqualification. Id., at 584. [p. 466] Our conclusion is that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a public trial before a judge other than the one reviled by the contemnor. See In re Oliver, 333 U.S. 257.

In re Oliver, 333 U.S. 257 concerns a Michigan judge who summarily sent the

petitioner to jail for contempt of court. At issue was whether there was a violation of the procedural due process guarantees of the Fourteenth Amendment. The Supreme Court of the United States held that there was such a violation.

The invesitgation took place in accord with Michigan's policy of allowing one-man grand juries, sometimes called "portable" grand juries due to the fact that they could move from place to place. Oliver was sentenced to jail when he responded to a subpoena but his story did not "jell." The Supreme Court of Michigan rejected petitioner's appeal, and certiorari was granted. As the opinion notes, [p. 261] "the one-man grand jury law was passed in 1917 following a recommendation of the State Bar Association that, in the interest of more rigorous law enforcement, greater emphasis should be put on more rigorous law enforcement, greater emphasis should be put upon the 'investigative procedure' for 'probing' and for 'detecting' crime. With this need uppermost in its thinking the Bar Association recommended a bill which provided that justices of the peace be vested with the inquisitorial powers traditionally conferred only on coroners and grand juries. (Mich. Laws 1917, Act 196).

The high court held that the judgement of the Supreme Court of Michigan should be reversed and the cause remanded to it for disposition "not inconsistent with this opinion".

The acts of Judges Dinice and Sullivan are of the sort of contempts. The jail sentences they impose are for contempts they imagine to exist. Oliver's

case involved gambling and official corruption. The Stedtler case involved drugs. Both cases are as a result of legislation which allows for jailing without trial. Dinice's finding of guilt results from his not hearing petitioner's conterclaim. Without hearing the other side of the case, Dinice jails. This is a flagrant disregard for the rights of the petitioner, especially so since petitioner has been required to operate the subject apartment house property without recompense. The assessment alone reflects not the value of the property, but the value of the uncompensated labor of the petitioner.

While both state trial judges are alleged to be possessed of immunity by the mere status of their judicial robes, personal bias or perjudice have often been camouflaged beneath those robes. In Berger v. United States, Oct. Term 1920, 255 U.S. 481. Mr. Justice McKenna, who delivered the opinion for the Supreme Court, began the opinion by stating that, "Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated..." After reviewing Judge Landis' nationalist propaganda, the Supreme Court concluded by stating that "Judge Landis [the trial judge] had no lawful right or power to preside as judge on the trial of defendants upon

the indictment. So ordered."

This bias infuses the acts of both Sullivan and Dinice. Dinice acted outside his jurisdiction, repeatedly, without care that it was financially impossible to pay real estate taxes on the property assessed at three-quarters of a million dollars, as well as pay the utilities and maintain the property during high tenant turn-over (due to non-payment of rent). He advanced no arguments to counter these facts; he sought no testimony, simply ignoring and suppressing the truth. Any suggestion that the City of Hackensack was at fault was considered a contempt of court; he refused to subpoena one landlord witness on the issues raised at trial. He was outraged that he could not be paid the fine immediately and sentenced petitioner to forty days in jail.

Sullivan likewise incarcerated petitioner's tenant, Stedtler, on drug charges for one year [knowing that petitioner was Stedtler's bail sponsor and had applied to be her trial lawyer], under a statute which provided for such relief if the defendant perpetrated the act within 1,000 feet of a school. The affirmative defense built into the statute - provided the defendant is not in her home - was ignored. As a result of Judge Dinice's shut-off of water, the tenant was constructively evicted. Abandoned by social services, she was re-arrested, remaining in jail for seven months with no opportunity to gain her freedom but by pleading guilty.

Greenwood v. Peacock, 384 U.S. 808, 16 L. Ed. 2d 944, 86 S Ct. 1800 concerned a Mississippi state trial of civil rights workers in Leflore County 1n 1964. Removal to federal court was sought under Section 1443(2), formerly section 3 of the Civil Rights Act of 1866. Although the majority voted to permit state adjudication over a strong dissent, that majority held that

> under section 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situaitons where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court."

Note that the exception applies here as to both Sullivan and Dinice. Petitioner spent many years trying to reduce his real estate taxes, only to discover them increased by $543,000. Now when Dinice discovered that taxes and utilties cost over $50,000 per year and tenants pay depressed rents due to poor municipal services, his bias is obvious. Under such circumstances a neutral magistrate should be selected - in this case a federal court. The relevant questions are, 1) Is petitioner's labor [operating the real property] compensated on the basis of his expertise, or is the failure to earn money cused as a pretext to capitalize cash flow into an exorbitant real property asssessment by the city 2) Are the real estate taxes too high - are they the result of capitalization of net income by standard techniques? 3) Have municipal services been cut due to bias? If all

three questions are answered in the affirmative, then there is a case in which "it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court."

Likewise with defendant Sullivan, the very act of enforcing the New Jersey Statute with regard to drug offenses within 1000 feet of a school results in jailing without proof of guilt for such a period of time as to negate the meaning of the statute - the tenant was placed there by the subsidy agent, abandoned by that subsidy agent, and then after being bailed out by the petitioner, constructively evicted by the shut-off of water. Stedtler was found to be guilty by Sullivan, despite his personal involvement in the denial of due process.

## POINT FOUR

THE AWARDING OF SANCTIONS UNDER FED. R. CIV. P. (11) IS NOT SUSTAINABLE UNDER THE FACTS WITHIN SINCE THE CAUSE OF ACTION IS NEITHER FRIVOLOUS NOR BROUGHT IN BAD FAITH.

Both defendants raise the issue of sanctions awarded in their behalf. Petitioner claims that the Court of Appeals had jurisdiction prior to award of said sanctions, that since there was no discovery conducted, no pretrial conference, no settlement conference, no motion hearings (motions to dismiss were on the papers alone), the award of sanctions is without basis in law or fact. No jury supported the position of the defendants, thus the jury trial demanded cannot be basis for their award.

As Ford v. Temple Hospital 790 F 2d. 342 (3rd Cir 1986) notes,

the general rule of law, known as the "American Rule" is that each party bears its own attorneys' fees. Alyeska Pipeline Service Company v. Wilderness Society, 421 U.S. 240, 247, 258-59, 95 S.Ct. 1612, 1616, 1622-23, 44 L. Ed.2d. 141 (1975). The rationale for this rule is that "one should not be penalized for merely defending or prosecuting a lawsuit, and that the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents' counsel." cites omitted. However, over the years, courts have established a number of exceptions to the American Rule. One of the exceptions authorizes a federal court to award counsel fees to a successful party "when his opponent has acted 'in bad faith, vexatiously, wantonly, or for oppressive

reasons.'" Hall v. Cole, 412 U.S. 1, 5, 93 S.Ct. 1943, 1946, 36 L.Ed. 2d 702 (1973). The power of the court to assess attorneys' fees was later determined by the Supreme Court to cover both the litigants and their counsel. Roadway Express Inc. v. Piper, 447 U.S. 752, 766, 100 S.Ct. 2455, 2464, 65 L.Ed. 2d 488 (1980) (if a court may tax counsel fees against a party who has litigated in bad faith, it certainly may assess those expenses against counsel who willfully abuse judicial processes). (p. 346)

Clearly, no bad faith was proven in the case at bar. The nature of petitioner's business brings him to landlord-tenant court repeatedly to secure sufficient funds to pay a large real estate tax and utility bills. He is a representative of the state and the city in collecting moneys for municipal and state projects. Economic issues are signficiant, so much so that the trials in special civil part of law division are conducted without consideration of the tenants' ability to pay, but on whether they did pay. However when problems are not resolved by summary proceedings, plenary hearings are required, and this forms the basis for the federal suit within. Have the defendants proven their case in court as to bad faith? No. Dinice's lawyer held a deposition lasting three hours, which produced tax return information confirming that calendar 1993 showed a taxable loss. Where is the bad faith when the tenants simply cannot pay for landlord services properly rendered? Dinice would claim that he should take jurisdiction through a series of legal hypotheticals - three bounced checks is

like an "odor" complaint, therefore the petitioner should be threatened with contempt for failure to allow the health department to search his basement. The over-assessment of real property is irrelevant as to whether the city is liable for tenant dissatisfaction hence the landlord by a process of elimination must be responsible.

The federal trial court continued these legal hypotheticals. "Since the judges may be immune, but the plaintiff appears to state a clear case, the only alternative is to award sanctions for a frivolous lawsuit - that would obviate the necessity for fact-finding, sadly lacking in the trials below.

## CONCLUSION

Despite the pendency of the three companion cases in the federal courts, on July 1, 1994, a Notice of Intention was posted on petitioner's door by the Hackensack Water Company to discontinue water service to the subject residential apartment house. On July 25, 1994, petitioner went to 190 Moore Street, Hackensack, an office of the Hackensack Water Company, offering a settlement check in the amount of $4,000 to postpone the shut-off for 90 days pending further negotiations. The water company refused the settlement check.

A comparison of the prices charged by Camden Water, by East Meadow Water (N. Y.), by Garden State Water, and by the Hackensack Water Company shows that the Hackensack Water Company has the most expensive water per unit volume in the subject area.

A notice pursuant to N. J. Court Rule 4:59-1(d) was delivered to the Clerk of the Court in the Bergen County Courthouse. This notice was due to the judgments handed down by the state judges as discussed in the companion cases. The court rule requires hearings prior to garnishment of bank accounts, etc. The notice was returned by the clerk with the statement they did not understand why such hearings would apply since they could not determine what docket numbers were involved, despite the prominent statement of the docket numbers on the notice. Petitioner's bank account was reduced by an amount awarded after a trial involving a tenant who applied for

an apartment, demanded maintenance work, demanded lease preparation, and then refused to consider the dollar amount of damamges. The judge (Koblitz) who issued this decision was in conflict - it was the former head of the defense team who "defended" Stedtler, resulting in her incarceration without trial for one year.

The state court system in August scheduled a trial on a matter petitioner filed some three years ago; the judge "dismissed" the case due to the refusal by the defendant to appear in court on the trial date. Petitioner objected.

These are typical problems with the state court system. The defendants within may claim they are immune from suit. Rather, they are insured as judges and they are liable for the natural consequences which flow from their acts.

Petititoner respectfully requests that the matters sub judice be returned to the federal trial court with adequeate instructions to assist it in conducting the trial within.

Date Submitted: August 13, 1994

SALVATORE MORETTI
Petitioner, Pro Se

App. 127

No. 93-1928

IN THE
SUPREME COURT OF
THE UNITED STATES

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OCTOBER TERM 1993

MOTION TO REOPEN

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SALVATORE MORETTI,

Petitioner,

vs.

MAYOR JOHN ZISA AND THE HACKENSACK CITY COUNCIL; GEORGE DIANA AND THE HACKENSAC BOARD OF ADJUSTMENT; PATRICIAL FARLIE AND THE HACKENSACK HEALTH DEPARTMENT; RICHARD CARUCCI AND THE HACKENSACK FIRE DEPARTMENT; C. MORRISSEY AND THE HACKENSACK POLICE DEPARTMENT; HENRY AMOROSO - HACKENSACK PROSECUTOR; HEACKENSACK WATER CO.; G. THOMAS GENTILE; AND GUTTERMAN-MUSICANT, INC.,

Respondents.

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APPLICATION TO RE-OPEN PETITION
FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

PETITION BY PLAINTIFF-APPELLANT
SALVATORE MORETTI, PRO SE
390 PARK STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-1414

Kindly accept this letter brief in support of petitioner's application to re-open the petition for writ of certiorari which was docketed 93-1928 on May 2, 1994. The petition was denied by the Supreme Court on October 3, 1994.

The appeal came as a result of the United States District Court, District of New Jersey, deciding on June 21, 1993 (Hon. Harold A. Ackerman, U.S.D.J.) that the trial court lacked jurisdiction due to the Tax Injunction Act. Judge Ackerman 's opinion in relevant part states:

"In either case, however, the claim must be dismissed because this court lacks subject matter jurisdiction.]

"The Tax Injunction Act ("Act") provides that:

[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax where a plain, speedy and efficient remedy may be had in the court of such State. 28 U.S.C. Section 1341.

"The principal purpose of the Act is to limit federal court interference with local tax matters. Hardwick v. Cuomo, 891 F.2d 1097, 1104 (3d Cir. 1989)(citing California v. Grace Brethren Church, 457 U.S. 393, 411 (1982)). The United States Supreme Court has interpreted this statute as prohibiting federal courts from granting injunctive relief, see Rosewell v. LaSalle National Bank, 450 U.S. 503, 522 (1981), as well as declaratory relief, see California v. Grace Brethren Church, 457 U.S. 393,

408-11 (1982), as long as there is a "plain, speedy and efficient remedy" available in state court. Both the Supreme Court and the Third Circuit have declined to rule on whether the Tax Injunction Act bars actions for monetary damages. See Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100 (1981); Sipe v. Amerada Hess Corp., 689 F. 2d 396, 403 (1982). However, in Fair Assessment, the Supreme Court held that the principle of comity prevents a federal court from granting damages in a Section 1983 case if a "plain, adequate and complete remedy" may be had in state court. Id. at 116; see also Hardwick v. Cuomo, 891 F2d. 1097, 1104 (3d Cir. 1989)(comity supplements Tax Injunction Act when only money damages are sought).

"In Fair Assessment, the court held that there is "no significant difference" between the "plain, speedy and efficient" standard under the Tax Injunction Act and the "plain, adequate, and complete" standard governing comity. 454 U.S. at 116 n. 8. The "plain, speedy and efficient" remedy requirement is to be construed narrownly. Sipe, 689 F.2d at 404 (quoting Grace Brethren, 457 U.S. at 413). A state remedy is deemed adequate if it satisfied certain prodecural criteria. Behe v. Chester County Bd. of Assessment Appeals, 952 F.2d. 66, 68 (3d Cir. 1981)(citing Rosewell, 450 U.S. at 512). Specifically, the state remedy is sufficient if it "'provides the taxpayer with a 'full hearing and judicial determination' at which [the taxpayer] may raise any and all consti

tutional objections.; Hardwick, 891 F.2d at 1105 (quoting Grace Brethren, 457 U.S. at 412).

"New Jersey provides several remedies which afford the plaintiff an opportunity to raise all constituional objections to the allegedly wrongful property assessment. For example, N.J.S.A. 54:3-21 provides that a taxpayer aggreived by the assessed valuation of property may appeal to the county board of taxation.3 [3. N.J.S.A.54:3-21 also provides that if the assessed value of property exceeds $750,000, the taxpayer may file a complaint directly with the tax court.]"

This opinion by the court led to the order dismissing of the other counts of the complaint with prejudice on June 21, 1993. The opinion came as a result of the filing by the defendants of motions to dismiss under Fed. R. Civ. P. 12(b)1 and 12(b)(6).

Clearly, the motions to dismiss the complaint were filed by each and every defendant in 1992, the first such motion being by defendant G. Thomas Gentile, who wrote as follows:

"PLEASE TAKE NOTICE that, upon the attached Affidavit of Joseph C. Zisa, Jr., and accompanying letter brief, Defendant G. Thomas Gentile will move the Court before the Honorable Harold A. Ackerman, United States District Judge, in the United States Court House in Newark, New Jersey, on December 12, 1992

[when the assessment was $766,300], at 10:00 a.m. or as soon thereafter as counsel may be heard, for an Order imposing sanctions on Plaintiff in the amount of Defendant's costs and attorneys fees in this action purusant to Federal Rule of Civil Procedure 11, as well as an Order dismissing Plaintiff's Complaint in its entirety as it relates to Defendant G. Thomas Gentile, pursuant to Federal Rule of Civil Procedure 12(b)."
ZISA AND HITSCHERISCH
Attorney for Plaintiff, Dated: 11/3/92,
by Joseph C. Zisa, Jr.

On February 14, 1995, petitioner within wrote to trial court judge Harold A. Ackerman as follows:

Hon. Harold A. Ackerman, J.U.S.D.C.
United States District Court
U. S. Federal Courthouse &
Post Office Building
Newark, New Jersey 07102

re: Salvatore Moretti v. City of Hackensack, et. al. Civil Action No. 92-4206 (HAA)

Dear Judge Ackerman:

On June 21, 1993, Your Honor entered an order dismissing the above captioned lawsuit. The basis for your dismissal of the action against the City of Hackensack was that there were remedies in the state court system. Your exact words follow:

"Moretti also alleged that the Council conspired to fix the assessed value of his property in excess of its actual value, thereby depriving him of his ownership rights. This court is barred from hearing this claim, however, for lack of subject matter jurisdiction. [Although the factual allegations set forth in this count refer to unidentified 'defendants,' the demand for relief contained in this names only the City Council. In either case, however, the claim must be dismissed because this court lacks subject matter jurisdiction.]

The Tax Injunction Act ("Act") provides that..."

Even before your final written decision, after Hackensack conceded jurisdiction in the state Tax Court, I filed in that court. Hackensack pursued remedy in that court until the "thirtenth hour," (November, 1994), when after conducting discovery for eleven months, it claimed there was no jurisdiction in the State Tax Court. In fact, pursuant to the order to dismiss for lack of jurisdiction drafted by the city, that court signed the order to dismiss on February 7, 1995, leaving me with no state remedies.

Under these circumstances, I am providing to the court a summary of the materials submitted to the state tax court, and request a hearing to determine whether your Honor will re-open the above captioned case for decision on the merits. (s) Salvatore Moretti

cc: Scott Topolski, Esq. (On Behalf of Hackensack, Federal Court); Donald Lenner, Esq. (On Behalf of Hackensack, State Court)

Note that petitioner copied in both the state tax court lawyer for the city (Lenner) and the Federal court lawyer for the city (Topolski).

Judger Ackerman of the United States District Court in Newark, New Jersey failed to re-open the tax court appeal filed by petitioner.

On February 7, 1995, petitioner wrote to Judge Pizzuto of the New Jersey Tax court as follows:

Hon. Peter D. Pizzuto, J.T.C.
125 State Street
Room 108
Hackensack, New Jersey 07601

Re.: Salvatore Moretti v. City of Hackensack, Docket No. 8336-93; Parcel One - Block 418, Lots 22 and 23. Parcel Two - Block 418, Lot 24. Motion Return Date January 6, 1995. Continuance on Motion to Impose Restraints on Collection of Tax by Taxing District; Countermotion by City to dismiss. Motion by Petitioner to Join as Taxable Real Property Block 418, Lots 22, 23, and 24, and to join as a contiguous property Block 415, Lot 8.B (390 Park Street, Hackensack). Judgment entered February 7, 1995. Interlocutory Appeal for Emergent Relief. Appellate Division Docket No____(Interim Relief was requested].

Enclosed find the Notice of Appeal to the Appellate Division from the entry of the judgment today dismissing petitioner's complaint filed in the New Jersey Tax Court, as above captioned.

Petitioner is appealing for emergent relief on the basis of his application on November 16, 1994 to the tax court - motion return date December 2, 1994 - for interim relief from the collection of the confiscatory taxes at 391-397 Park Street - and the additional parcels subject of this case.

The delay from 1992 through the superior court-law division, superior court - special civil part, federal district court, and United States Court of Appeals now requires emergent application for relief from the taxes which act as a lien on the above captioned property. cc.: Donald Lenner Esq.,286 Union St.Hackensack, New Jersey 07601

Judge Pizzuto refused to reconsider the order he entered on February 7, 1995. That order provides as follows:

DONALD J. LENNER, ESQ.
286 UNION STREET
HACKENSACK, NJ 07601; (201) 343-6660
ATTORNEY FOR DEFENDANT

| | |
|---|---|
| SALVATORE MORETTI,<br>PLAINTIFF,<br>v.<br>CITY OF HACKENSACK,<br>DEFENDANT | TAX COURT OF NEW JERSEY<br>DOCKET NO.8336-93<br>ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE |

FINAL JUDGMENT UNDER R. 8:9-1

THIS MATTER being opened to the Court on application of Donald J. Lenner, Esq., attorney for Defendant, and the Plaintiff having appeared Pro Se, and the Court having considered the papers filed and the arguments of counsel for the Defendant and of the Plaintiff Pro Se, and it being the finding of the Court that there was a faulure of the Plaintiff to exhaust his administrative remedies and meet the jurisdictional requirements of N.J.S.A. 54:3-21 for a direct appeal to the Tax Court; that the litigation history does not excuse the Plaintiff's failure to timely file a complaint with the Tax Court for the tax year 1991 or timely file a complaint with either the county board of taxation or the Tax Court for the tax year 1992; and for good cause shown,

IT IS on this 7th day of FEBRUARY, 1995 ORDERED THAT the Complaint in the above matter is hereby dismissed with prejudice.

(s) Peter D. Pizzuto, J.T.C.
Tax Court of New Jersey

This order finally disposes of the tax appeal from an unconstitutionally high assessment on the basis of failure to file, yet the complaint filed with the United States District Court raises a 42 U.S.C.A. Section 1983 challenge to the confiscatory real property taxation of petitioner's property, said complaint filed with the Clerk's Office in the District Court in Newark, New Jersey on October 6, 1992.

Petitioner's prior appeal was on

August 14, 1991 with the Bergen County Tax Board, seeking a reduction in assment from $792,300 to $540,000 (a $250,300 decrease) of a twenty unit apartment house, under his ownership (and within which he dwells). That appeal (no. 445) for tax year 1991 resulted in no reduction whatever for the land (the assessment remained at $280,800), and merely a $25,500 reduction for the buildings. The basis of the judgment was stated to be "location obsolescence." The judgment was mailed to petitioner on February 20, 1992, by the Bergen County Tax Board.

What is curious about the Pizzuto order is the following quote:
"the litigation history does not excuse the Plaintiff's failure to timely file a complaint with the Tax Court for the tax year 1991 or timely file a complaint with either the county board of taxation or the Tax Court for the tax year 1992"

In fact it is not clear the issues were merely taxation issues, as opposed to civil rights issues, and the failure of the county tax board to reduce the land assessment at all suggests that petitioner was correct in claiming discriminatory assessment practice before the United States District Court. The "external diseconomy" mentioned by the county tax board consists of an assortment of land uses adjacent to petitioner's building such as a garbage compactor factory, two funeral parlors (one of which expanded into the residential zone), other industrial or commer

cial uses, plus municipal practices involving fire alerts, police break-ins, as well as tenant vandalism, non-payment of rent, and over twenty evictions. In addition, over two dozen condominium apartments in new buildings (281 and 300 Park Street) were sold for $100 per unit, while an adjacent seventy-two unit apartment house built in 1981 (370 Park Street) was sold in a "Bankruptcy Sale" on November 20, 1991. This apartment house had over one hundred fire alarm alerts in the few months just before its sale.

Mr. Lenner's drafting of the order seems to depart from Mr. Topolski's position taken in the United States District Court when he addressed the taxation issue - in his motion to dismiss - (at page 15 of his brief filed February 2, 1993):

"Although plaintiff asserts that the City of Hackensack has improperly assesed the true value of his property, thus depriving him of ownership of the property without due process of law, he, nevertheless, fails to note that a federal court is not the proper forum to object to such an assessment of real property. New Jersey law does specifically provide for state administrative and judicial access and remedies, N.J.S.A. 54:3-21 states:

"A taxpayer feeling aggrieved by the assessed valuation of his property, or feeling that he is discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by

the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may or or before April 1 appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may, on or before April 1, file a complaint directly with the tax court, if the assessed valuation of the property subject to the appeal exceeds $750,000. A taxpayer shall have forty-five (45) days to file an appeal upon the issuance of a notification of a change in assessment. All appeals to the tax court hereunder shall be in accordance with the provision of the State Tax Uniform Procedure Law, R. S. 54:48-1 et seq.

"If a petition of appeal or a complaint is filed during the 19 days next preeceding April 1, a taxayer or a taxing district shall have twenty (20) days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxaiton or a counterclaim with the clerk of the tax court, as appropriate."

N.J.S.A. 54:51A-1 goes on to provide in pertinent part:

"a. Any party who is dissatisfied with the judgment, action or determination of the county board of taxation may seek review of that judgment, action or determinatiuon in the tax court by filing a complaint in the tax court, pursuant to rules of court."

R. 8:3-1 et seq. sets forth the actual mechanics of filing the complaint.

"Thus, plaintiff had a clear remedy

provided by statute, to challenge the municipality's tax court (sic) assessment. He could have -- and, indeed should have, if he honestly felt he had been wronged -- filed a petition of appeal with the Bergen County Board of Taxation on Main Street in Hackensack, within walking distance of where plaintiff's property is located and where he maintains his office. In lieu of that petition, he could have filed his appeal directly with the New Jersey Tax Court, if the assessed value of his property exceeded $750,000. He would have been given a full and fair opportunity to present all competent evidence in support of his position at an open hearing... Plaintiff failed to do this, He should not now be permitted to circumvent a clear state statute and equally clear state tax court rules by spuriosly alleging that a particular assessment was improper and had deprived him of his property without due process of law."

Even before an opinion was rendered by Judge Ackerman, petitioner filed a complaint with the New Jersey Tax Court in March, 1993 with the assessed value as of February, 1993 set at $766,800. The contiguous parcel under petitioner's ownership was $135,700, resulting in a combined assessment of $901,700 for 1993 - even after the reduction by the county tax board (under the statute the adjacent parcels may be included within the same tax appeal). Incredibly, when petitoner took Topolski and the City of Hackensack at their word, the complaint

was dismissed. The City of Hackensack waited to file its motion to dismiss until after conducting discovery for one full year. The tax court dismissed due to "lack of jurisdiction," the assessment being below $750,000.

Petitioner's twenty unit apartment house was assessed at $295,400 until 1987, following real property tax appeals in 1977-1983 (the last appeal being to the newly created N. J. Tax Court. In 1987, the assessment increased $24,845 per apartment, up $496,900 to $792,300. It is noteworthy that Hackensack defended its assessment with an October 6, 1981 apraisal by Charles W. Mason, arriving at a value of $347,500. Mason's report became suspect when his figures were shown as grossly erroneous. For example, Mason estimates annual water costs for 1978-1980 at $854. On August 17, 1992, the City of Hackensack passed resolution 260 fixing the water bill owed at $9,329.62 for petitioner's apartment units, reflecting 6,000,000 gallons of water consumed for three years (cited at p. 24, C.A.93-5581, Moretti v. Dinice, et al).

The water company which does water searches (billing inquiries) for Hackensack, was charging $3,000 per quarter, $12,000 per year, 14 times Mason's annual costs used to derive appraised value. On June 21, 1994 the N. J. Appellate Division (A-5696-92T3) affirmed award of $6,655.11 by the Special Civil Part (Bergen County) to the water company. The Appellate Division had also

affirmed the assessment based on Mason's appraisal in 1984 (A-3525-82T3).

External land uses (a psychiatric halfway house, two funeral parlors, a garbage compactor factory, a nuisance boarding houses, etc.) were ignored by Mason. Bergen County chancery court challenges to this zoning had been dismissed by the trial court and affirmed by the N. J. appellate division on December 17, 1982, A-3801-80T1, A-3797-80T1, A-3806-80T1. Since 1984, the funeral parlors have greatly expanded converting a residential zone into a business zone by securing over fifty additional parking spaces.

Mason's appraisal is also suspect in that he derives land value by comparing acquisition in 1980 of 204,737 sq. ft. of land for a six story 253 unit building - Quail Heights - with land value for petitioner's two story apartment house. Mason also derives land value from purchases for a 58 unit four story building built over garages, Dawn Manor; petitioner's property has no garages. Mason compares improved sales from property in superior residential neighborhoods, with no external diseconomies. In estimating operating expenses, Mason's three year averages are:

Management.....$1,847
Fuel, Electric & Gas.$6,689
Water.....854
Insurance.....$1,642
Supt. Wage.....$1,600

Compare these figures with the actual four year average for years 1991-1994:

| | | Increase |
|---|---|---|
| Management | $16,387 | 887% |
| Fuel, Electric & Gas. | $22,480 | 336% |
| Water.....(est.) . | $9,500 | 1121% |
| Insurance | $ 9,040 | 550% |
| Supt. Wage | $ 6,000 | 375% |

Not surprisingly, gross rental collections decreased from 1990 to 1994, (due to lower rents and higher rent losses). Rent income did not even double from 1979 to 1992. In 1991-1994, net cash flow was negative.

At the February 7, 1995 motion to dismiss Tax Court judge Pizzuto dismissed petitioner's case without comment, despite four years of continuous litigation. The county tax board cannot consider prior years over-payment of taxes, resulting in no possible state appeal.

Petitioner has appended a photographic exhibit, A-R, clearly depicting the discriminatory taxation policy by the local taxing authority. Further appeal to the state of New Jersey would be futile. Petitioner prays for the reopening of the writ of certiorari for determination of the within cause of action.

Submitted: April 6, 1995

By: _____

SALVATORE MORETTI
PETITIONER PRO SE

Supreme Court, U.S.
FILED
MAY 26 1995
CLERK

No. 94-1762

In The

# Supreme Court of the United States

October Term, 1994

SALVATORE MORETTI,

*Plaintiff-Petitioner,*

v.

LOUIS J. DINICE and TIMOTHY J. SULLIVAN,

*Defendant(s)-Respondent(s).*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit**

## BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT, DINICE

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## QUESTIONS PRESENTED

1. Whether the Doctrine of Judicial Immunity bars a Complaint which alleges violations of petitioner's federal constitutional and civil rights under 42 *U.S.C.* Section 1983 by a municipal court judge, for decisions issued during judicial proceedings, and required the district court to dismiss such Complaint pursuant to *Fed. R. Civ. P.* 12(b)(6) for failure to state a claim upon which relief can be granted.

2. Whether the district court abused its discretion by awarding attorneys fees and costs as sanctions under *Fed. R. Civ. P.* 11 against petitioner, a law school graduate, who ignored clear legal precedent which holds that members of the judiciary are immune from suits which arise from decisions rendered during judicial proceedings.

## LIST OF PARTIES

1. Petitioner, Salvatore Moretti, is an owner of real property located in the City of Hackensack, County of Bergen, State of New Jersey, and a graduate of New York Law School.

2. Respondent, the Honorable Louis J. Dinice, is an attorney-at-law of the State of New Jersey and was serving as municipal judge of the City of Hackensack, County of Bergen, State of New Jersey.

3. Respondent, the Honorable Timothy J. Sullivan, is an attorney-at-law of the State of New Jersey and is and was serving as a Judge of the Superior Court of New Jersey, County of Bergen.

There are no other parties to this action.

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## TO THE HONORABLE SUPREME COURT:

The respondent, Louis J. Dinice, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by petitioner, Salvatore Moretti.

## OPINIONS BELOW

The Third Circuit Court of Appeals affirmed the district court's dismissal of the Complaint against respondent, Louis J. Dinice. The Circuit Court's order has been reproduced in the Appendix to the Petition for Certiorari. (App. 2). The Third Circuit Court of Appeals did not rule on adequacy of sanctions. Petitioner's Notice to Appeal was filed on September 17, 1993 and indicated that petitioner was appealing from the district court's orders of August 4, 1993 (dismissing the Complaint against respondent, Sullivan), and September 13, 1993 (dismissing the Complaint against respondent, Dinice). Both Orders directed that sanctions should be imposed.

Orders of the district court dismissing the Complaint are reproduced in the Appendix to the Petition for Certiorari. (App. 3-15). The district court entered an Order denying petitioner's motion for reargument on September 30, 1993, and Orders imposing sanctions in the amount $1,613.65 and $2,780.50. Petitioner did not reproduce the district court's order denying his motion for reargument in the Appendix to the Petition for Certiorari. The district courts Orders of October 19, 1993 and October 28, 1993, imposing sanctions in favor of respondents, Dinice and Sullivan, respectively, are reproduced in the Appendix to the Petition for Certiorari. (App. 16-19).

None of the Orders below have been published.

*Other Orders*:

The district court entered an Order pursuant *Fed. R. Civ. P.* 69 requiring petitioner to provide documentation and to give testimony relating to his assets and things in action.

The district court entered a second Order pursuant to *Fed. R. Civ. P.* 69 enforcing litigant's rights when petitioner failed to obey the court's prior Order.

The Third Circuit Court of Appeals entered an Order which denied petitioner's motion to stay sanctions pending appeal.

None of these other Orders have been published nor have any been reproduced in the Appendix to the Petition for Certiorari.

## STATEMENT OF JURISDICTION

The jurisdiction to review the Third Circuit Court of Appeals affirmation of the district court's decision to dismiss the Complaint against respondent, Dinice, pursuant to *Fed. R. Civ. P.* 12(b)(6) is invoked pursuant to 28 U.S.C. Section 1254(1).

The jurisdiction of the Third Circuit Court of Appeals was invoked pursuant to 28 U.S.C. Section 1291 as an appeal as of right from the Order of the district court dismissing the Complaint for failure to state a claim under *Fed. R. Civ. P.* 12(b)6.

The jurisdiction of the district court was invoked pursuant to 28 U.S.C. Section 1331 in that the Complaint raised federal questions under the Constitution of the United States (Fourth, Fifth and Fourteenth Amendments) and 42 U.S.C. Sections 1981, 1982 and 1983.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. Sections 1981, 1982 and 1983.

## COUNTER STATEMENT OF THE CASE

On or about February 3, 1993, petitioner, Salvatore Moretti, filed a Complaint in the United States District Court for the District of New Jersey, alleging violations of his federal constitutional and civil rights by state and municipal court judges (respondents herein) which petitioner alleges arise from decisions that each rendered during the course of judicial proceedings. The jurisdictional statement contained in the Complaint chronicles petitioner's experience and dissatisfaction with the State court system in New Jersey. (App. 20-49) Petitioner highlighted his discontent in the Brief that he submitted to the Court of Appeals wherein he blamed "[t]he failure of the state court system to remedy . . . matters resulted in the filing of three federal companion cases." (App. 73) The Petition for Certiorari refers to companion cases as *Moretti v. Zisa, et al.*, DC 92-4206 and *Moretti v. State of New Jersey*, DC 93-528. (Petition for Certiorari, Page 3). The Petition for Certiorari does not address the inter-

relation of any other case to the matter presented for review on this petition nor does petitioner justify his characterization of the other matters as "companion cases."

The allegations in the Complaint against Judge Dinice relate to municipal court matters in which petitioner appeared in his courtroom as litigant. The Complaint identified certain municipal prosecutions out of which the alleged civil rights violations arise, notably *State v. Salvatore Moretti*, Municipal Docket No. 92-2916, (App. 23-30). This was a municipal prosection against petitioner arising out of petitioner's failure to supply his residential rental units with water. (App. 25). Petitioner refers to other unrelated litigation which was brought or pending in other courts at the time which he claims have involved water shut off in his units. (App. 23). Petitioner highlighted the factual basis for his allegations against Judge Dinice, all which arise out of judicial proceedings in the Hackensack Municipal Court in the brief that he submitted to the Circuit Court of Appeals (App. 73-81).

The Petition for Certiorari does not identify the particular act(s) of respondent Dinice which petitioner attributes as violations of specific constitutional or civil rights. Petitioner, however, did argue before the Third Circuit Court of Appeals that his rights were violated when Judge Dinice failed to consider evidence relating to water consumption by his tenants in the municipal prosection referred to above. (App. 73-76). Petitioner also contended that Judge Dinice did not permit certain discovery in that matter and failed to take notice of the disposition of the litigation in other courts. (App. 76-77). Petitioner's own

pleadings demonstrate that, in his role as judge, respondent, Dinice, defined the issue in the municipal prosecution as whether petitioner provided water to his tenants, (App. 77), and determined that petitioner did not do so and, therefore, fined him $500.00 plus $25.00 court costs. (App. 79).

Other factual circumstances upon which petitioner bases his allegations of civil rights violations are found in the Complaint. Again, petitioner did not identify the particular protected interests which he claims have been violated by respondent, Dinice. In a municipal prosecution, for instance, petitioner charges that Judge Dinice failed to hold non-appearing subpoenaed witness in contempt (App. 24) and failed to consider certain evidence (App. 36 and 74-76). The Complaint also charges that petitioner's constitutional rights were violated when respondent refused to permit discovery in a quasi-criminal prosecution (App. 26-27, 31-36 and 76), and when Judge Dinice held petitioner in contempt for refusing to pay an imposed fine which resulted in petitioner's arrest. (App. 29 and 79).

## REASONS FOR DENYING THE WRIT

### POINT I

### THIS COURT SHOULD NOT SECOND GUESS THE THIRD CIRCUIT COURT OF APPEALS WHICH BY AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT APPROVED THE TRIAL COURT'S APPLICATION OF FED. R. CIV. P. 12(b)(6) UNDER THE CIRCUMSTANCES.

*Fed. R. Civ. P.* 12(b)(6) affords a litigant relief when a Complaint filed against him fails to "state a claim upon

which relief can be granted." The trial court correctly recognized and applied the principles set forth in *Bartholomew v. Fischl*, 782 F.2d 1148, 1152 (3d Cir. 1986); *Angelasatro v. Prudential-Bache Securities, Inc.*, 764 F.2d 939, 944 (3d Cir.), *cert. denied*, 474 U.S. 925, 106 S. Ct. 267, 88 L. Ed. 2d 274 (1985), that such a motion may only be granted if accepting all well-pleaded allegations in the Complaint as true, and viewing them in the light most favorable to petitioner, petitioner is not entitled to relief. The district court determined that the tortuously lengthy Complaint filed by petitioner fails to raise any allegation that if true would give rise to a claim for relief.

The district court made specific findings that all alleged instances of wrong-doing arose out of judicial proceedings initiated in municipal court in Hackensack, New Jersey, over which respondent, Dinice, presided as a judicial officer and to which petitioner was a party. The district court held that the doctrine of judicial immunity barred petitioner's claims.

The Circuit Court of Appeals' review of the district court's Orders of dismissal pursuant to *Fed. R. Civ. P.* 12(b)(6) was plenary. *Moore v. Tartler*, 986 F.2d 682, 685 (3d Cir. 1993); *Young v. Quinlan*, 960 F.2d 351, 357 (3d Cir. 1992); *Ranson v. Marazzo*, 848 F.2d 398, 401 (3d Cir. 1988). The Petition for Certiorari does not demonstrate that how the lower courts misapplied the applicable law. The trial court was compelled to accept as true the factual allegations in the complaint and all reasonable inferences that could be drawn from them, and had to refrain from granting dismissal unless it was certain that no relief could be granted under any set of facts which petitioner could prove. See *Ranson v. Marazzo*, 848 F.2d 398, 401 (3d

Cir. 1988) (*citing D.P. Enterprises v. Bucks County Community College*, 725 F.2d 943, 944 (3d Cir. 1984)).

This Court should not deviate from the ordinary practice that the application by a Federal District Court of Rules of Civil Procedure, when affirmed by a Court of Appeals, will not be reviewed on Certiorari. *See Appalachian Power Co. v. American Institute of Certified Public Accountants*, 80 S. Ct 16, 4 L. Ed. 2d 30 (1959).

## POINT II

## THE LOWER COURTS CORRECTLY DETERMINED THAT PETITIONER HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE JUDGE DINICE IS AFFORDED ABSOLUTE JUDICIAL IMMUNITY FOR ACTIONS TAKEN AS THE MUNICIPAL COURT JUDGE OF THE CITY OF HACKENSACK.

This case presents no novel issue for review and would have no precedential value. In *Pierson v. Ray*, 386 U.S. 547, 554 (1967), this Court confirmed that the doctrine of judicial immunity protects a local judge against any claim for damages arising from actions in furtherance of his judicial office. *Id.* The immunity afforded to a judge under such circumstances is absolute. *Stump v. Sparkman*, 435 U.S. 339, 359, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); *Briscoe v. La Hue*, 460 U.S. 325 (1983); *Dennis v. Sparks*, 449 U.S. 24, 29, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1978). A judge will not be deprived of immunity on the basis that his actions were taken in error, were done maliciously, or were done in excess of his authority. *Stump*, 435 U.S. at 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331; *Pierson*, 386 U.S. at 553-59, 87 S. Ct. 1213, 18 L. Ed. 2d 288. Moreover, a

judge's absolute immunity for his judicial acts will not be impaired even if his exercise of authority is flawed by the commission of grave procedural errors. *Stump*, 435 U.S. at 359, 98 S. Ct. 1099, 55 L. Ed. 2d 331. A judge, however, will be subject to liability only in instances where his actions are taken in the "clear absence of all jurisdiction." *Id.* at 357; *see Mireles v. Waco*, 502 U.S. ___, 112 S. Ct. 288, 116 L. Ed. 2d 9, 14 (1991).

This Court acknowledged the policy behind the doctrine of judicial immunity in *Pierson* and explained that:

> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction . . . This immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection of benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. (Citations omitted). It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation. *Id.* at 553-54.

Here, plaintiff has asserted that suit was initiated in federal court because petitioner could not obtain satisfaction in state court. The Complaint goes so far as to describe petitioner's cause of action against Judge Dinice as having resulted from what petitioner perceives to be "court-house government" and having had his due process rights violated. In actuality, this case involves a dissatisfied litigant who in his pleadings, admits dissatisfaction with the state court system and the judges who decided matters against him and who now charges those same judges with malice and corruption. The Petition for Certiorari and Complaint do not contain any allegation that respondent, Dinice, acted outside his jurisdiction. Dismissal was warranted under the circumstances.

Nevertheless, in the Petition for Certiorari, Petitioner contends for the first time that the "theory of absolute immunity . . . was rendered moot by the legislative adoption of the 1947 N.J. Constitution." (Petition for Certiorari, Page 21). Petitioner's new contention on certiorari should not be reviewed because it was not presented to and decided by the Circuit Court of Appeals. *See Walters v. City of St. Louis*, 347 U.S. 231, 233, 74 S. Ct. 505, 98 L. Ed. 2d 660 (1954). The Petition for Certiorari digests New Jersey's constitutional and statutory provisions for the discipline and removal of state judges which has no relevance to the issue decided by the district court below, i.e., whether petitioner stated a claim for relief under 42 U.S.C. Sec. 1981, 1982, 1983 and/or the federal constitution.

## POINT III

## THE DISTRICT COURT PROPERLY IMPOSED SANCTIONS AGAINST PETITIONER FOR FILING A COMPLAINT THAT LACKS ANY LEGAL BASIS AND WAS FRIVOLOUS.

The district court properly awarded respondent Dinice sanctions, despite petitioner's status as a *pro se* litigant. Judge Lifland noted in the Memorandum and Order of September 13, 1993, that "the court holds allegations contained in *pro se* complaints 'to a less stringent standard than formal standards drafted by lawyers'" (Citation omitted). (App. 14). *Fed. R. Civ. P.* 11 provides for the imposition of sanctions for frivolous litigation and sets forth, in pertinent part:

> A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address.
>
> * * *
>
> The signature of . . . [a] party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> * * *
>
> If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or

> upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The "central purpose of Rule 11 is to deter baseless filings in district court and thus . . . streamline the administration and procedure of the federal courts." *Cooter & Gell v. Harmarx Corp.*, 496 U.S. 384, 393, 110 S. Ct. 1108, 75 L. Ed. 2d 96 (1990). Courts should impose sanctions in order to discourage wasteful and abusive tactics on the part of litigants. *See Princeton Economics Group, Inc. v. American Tel. & Tel. Co.*, 768 F. Supp. 1101, 1116 (D.N.J. 1991) (*citing Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 157 (3d Cir. 1986)).

In the instant matter, Judge Lifland considered plaintiff's *pro se* status and legal training in determining that petitioner "had the necessary tools to conduct a reasonable search as to the applicable law, which he chose not to do" and that the "slightest effort at legal research as to the viability against a sitting judge for judicial rulings would have informed [Mr.] Moretti that his claim was frivolous. . . . " (App. 12). Judge Lifland further found that petitioner "chose to burden Judge Dinice, and out of malice generated by Judge Dinice's rulings, rather than out of concern for [petitioner's] constitutional rights." (App. 13).

Since all applicable case law provides that respondent, Dinice, was immune from suit for all judicial acts

taken in his capacity as judge of the Municipal Court of the City of Hackensack, and since petitioner chose to initiate suit in spite of established law, sanctions were properly imposed. Petitioner has not contested whether the amount awarded to Judge Dinice as sanctions were reasonable. Moreover, there is nothing before this Court that would demonstrate that such sanctions were unreasonable.

## CONCLUSION

Respondent respectfully submits for the reasons set forth herein that the judgment of the district court be affirmed in its entirety.

Respectfully submitted,

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In The
***SUPREME COURT OF THE UNITED STATES***
October Term, 1994

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SALVATORE MORETTI,
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**On Petition for Writ of Certiorari**
**To The United States Court of Appeals**
**For the Third Circuit**

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# REPLY BRIEF ON BEHALF OF PETITIONER, SALVATORE MORETTI

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POINT ONE

PETITIONER PRESENTED INSTANCES OF VIOLATIONS OF THE CANONS OF JUDICIAL ETHICS BY DINICE TO THE FEDERAL TRIAL COURT AND THE COURT OF APPEALS, WHICH WERE ACTIONABLE UNDER THE 1947 NEW JERSEY CONSTITUTION'S REVISED ADMINISTRATION OF THE COURTS.

Dinice maintains at p. 9 of his brief in opposition to the granting of certiorari that, "in the Petition for Certiorari, Petitioner contends for the first time that the 'theory of absolute immunity...was rendered moot by the legislative adoption of the 1947 N. J. constitution' (Petition for Certiorari, p. 21). Petitioner's new contention on certiorari should not be reviewed because it was not presented to and decided by the Circuit Court of Appeals."

Zimmerer as a member of the New Jersey bar is required to know the history of the state constitution, and its interpretation on the subject of the practice of law by judges and lawyers. His allegation that a suit against a judge, Dinice, does not touch upon such issues is ill-advised. He is directed to the cases cited in the petition for certiorari for the interpretation of the constitution as it relates to judicial discipline, and removal.

Petitioner directs his attention to footnote 50 contained in Spare the Rod and Spoil the Judge? by Paula Abrams, Depaul L. Rev. v.41, p. 59, which states as follows:

Fn. 50. This thread (a drive to improve the administration of the court system beginning in the twentieth century, in which the Model Judicial Act provided for a judicial council to remove from office judges based on misconduct or incapacity) was taken up by the states in revising their court systems. In 1947 New Jersey amended its constitution to revise its article on the judiciary and establish a new unified court system that became a model for court reform throughout the country. The New Jersey 'plan' established a state-wide managerial court organization under the authority of the chief justice of the New Jersey Supreme Court. The New Jersey Supreme Court made the American Bar Association Canons of Judicial Ethics binding on judges and used its Bar disciplinary authority to discipline judges. The New Jersey expreience further contributed to the belief that the judiciary should be responsible for discipline of judges. Today 47 states and the District of Columbia have created discipline systems that provide for discipline and removal either by a judicial branch or an independent commission. Most of these states established disciplinary authority by constituional amendment."

This law review discusses the federal system for the removal and disciplining of Article III judges who are otherwise protected by the United States Constitution. 28 U.S.C.S. Section 372 states in relevant part at (c)(1) that:

"Any person alleging that a cir-

cuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to dischage all the duties of office by reason of mental or physicial disability, may file with the clerk of the court of appeals for the circuit a writen complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of thecourts and on the basis of informmation available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purpose of the subsection and thereby dispense with filing of a written complaint."

The Code of Conduct for United States Judges follows:

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.
Canon 3. A Judge Should Perform the Duties of the Office Impartially and Diligently.
Canon 4. A Judge May Engage in Extra-Judicial Activities to Impove the Law,

the Legal System, and the Administration of Justice.
Canon 5. A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties.
Canon 6. A Judge should regularly file reports of compensation received for law related and extra-judicial activities.
Canon 7. A Judge should refrain from poitical activity.

Note that Canon 6 in the New Jersey Code of Judicial Conduct for 1993 differs as follows:

Canon 6. A Judge Should Not Receive Compensation for Quasi-Judicial and Extra-Judicial Activities.

The social scientific reasons for the change in the disciplining of judges is set forth in the November, 1993 issue of the University of Pennsylvania Law Review, vol. 142, no. 1. As that law review notes at its Foreword: The Law of Federal Judicial Discipline and the Lessons of Social Science, by S. B. Burbank and S. Jay Plager, p. 2 "[u]ntil 1980, the law of federal judicial discipline was to a great extent the law of impeachment. In the absence of any impeachment since 1936, it was not unreasonable to ask whether the only constitutionally prescribed process for imposing discipline on Article III judges was adequate to serve the needs of a nation, and of a judiciary, quite different from that contemplated by the framers and ratifiers of the Constitution....(p. 3) The Judicial

Councils Reform and Judicial Conduct and Disability Act of 1980 was designed to help the judiciary deal fairly with problems of misconduct and disability not requiring the awesome power of impeachment, and to help Congress when proceedings under the Act revealed a need for the exercise of that power."

Although Mr. Zimmerer contends that Dinice is protected by absolute immunity, petitioner maintains that the foregoing legislative and constitutional enactments have modified the rule of absolute immunity. As Abimbola A. Olowofoyeku, in SuingJudges: A Study ofJudicial Immunity, states, p. 217, "[t]he sum, then, of this book is that the solution to the problems raised by the need to protect honest judges while at the same time ensuring that the less conscientious ones pay for their misdeeds lies not in maintaining the rule of absolute immuity but in a carefully worked out rule of qualified immunity ....The general rule should be one of immunity, with exceptions for injurious acts prompted by malice,/[218] fraud, corruption, conspiracy, and for acts occasioned by gross negligence. Procedural and other safeguards should be introduced (legislatively) to prevent abuse." (cf.Note,Liability of Judicial Officers Under Section 1983, Yale Law Journal, v. 79, p. 322 (1969).

The jurisdicitonal statement set forth in the complaint filed in the federal trial court included the disbarment of petitioner's attorney by the N.

J. Supreme Court, as well as the lack of accountability of state court judges when confronted with long term problems of housing.

POINT TWO

PETITIONER DISCUSSED POINT BY POINT THE INSTANCES OF JUDICIAL MISCONDUCT OCCURRING BELOW AT BOTH THE THRID CIRCUIT COURT OF APPEALS STAGE AND AT THE FEDERAL DISTRICT TRIAL LEVEL, WHICH PROVE THAT THE SANCTIONS IMPOSED ARE UNWARRANTED AND EXCESSIVE.

Dinice argues for denial of the petition for certiorari because (p. 9 of his brief in opposition to the granting of certiorari): "in the Petition for Certiorari, Petitioner contends for the first time that the 'theory of absolute immunity...was rendered moot by the legislative adoption of the 1947 N. J. constitution' (Petition for Certiorari, p. 21) Petitioner's new contention on certiorari should not be reviewed because it was not presented to and decided by the Circuit Court of Appeals."

Consider that the Petitioner submitted a brief to the United States District Court Judge Lifland (p. 10-13) (copy to Robert Zimmerer (Dinice) and the Attorney General of New Jersey (Sullivan) on April 24, 1993 which discussed in detail the dissent in Briscoe v. LaHue, 103 S.Ct. 1108 (1983), which dissent by Justice Marshall notes at p. 1130, "to assume that Congress, which had enacted a criminal sanction directed against state judicial officials, intended sub silentio to exempt those same officials from the civil counterpart approaches the incredible." At p. 1129, Justice Marshall notes that "[t]his Court (the United States Supreme Court) has from time to time read

Section 1983 against the 'background' of common-law tort liability. Far more pertinent to this case, however, is the backgournd provided by the 1866 Civil Rights Act. Representative Bingham, who had introduced the amendment to substitute civil liability for criminal liability in the 1866 Act, had become chairman of the House Judiciary Committee by the time of the 42nd Congress. Senator Trumbull, the Senate sponsor for the 1866 Act, was chairman ofthe Senate Judiciary Committee in 1871. Representative Shellabarger, who had participated in the debates on the 1866 legislation, drated the 1871 Act...Of all the measures in the Ku Klux Klan Act, Section 1 generated the least controversy since it merely provided a civil counterpart to the far more controversial criminal provision in the 1866 Act."

Petitioner at p. 14 stated, "the first ten amendments to the United States Constitution speak eloquently to the issues cited herein...These issues were all cited to in the jurisdictional statement, as well as in the habeas corpus prepared, Under the circumstances where even the water bill leads to incarcearation, such documents must be fresh in mind for tenants and management are similarly situated."

As to whether the Canons of Professional Conduct were before the United States Court Judge Lifland deciding the case of Moretti v. Dinice and Sullivan when the case of Moretti v. Hackensack

Water Co. was heard before Judge Dinice, and State of New Jersey v. Stedtler was heard before Judge Dinice (as to her arrest in Hackensack), petitioner submitted a brief on June 17,1993, entitled, Brief in Support of Vacating of Judgements Due to Conflict of Interest of Ellen L. Kobitz, J.S.C., (in the Special Civil Part cases, Bergen County) DC-705907-92, DC. 4327092, SC-585-93. Koblitz was the deputy head of the public defenders office of Bergen County in charge of defending Stedtler before Judge Sullivan, respondent within, and Petitioner submitted two habeas corpus motions seeking release of Stedtler, filed with Judge Sullivan and the state of N.J., and filed with Judge Sullivan and the Federal District Court in Newark. Kobitz was a defendant in the companion case of Moretti v. State of New Jersey, Ellen Kobitz, et. al., (U.S. District Court, Newark, N. J. D.C.93-5577, C.A. No. 94-5171, U. S. Supreme Court No. 94-1441, (Petition for Certiorari denied April 17, 1995). That brief was part of the "Appendix Opposing Grant of Motion to Dismiss Complaint Against Louis J. Dinice under Fed. R. Civ. P.11 & 12(B)", which appendix was submitted September 14, 1993 to Judge John Lifland, copies to Robert Zimmerer (Dinice) and Patrick DeAlmeida (Sullivan). The letter of transmittal states in part:

Re: Salvatore Moretti v. Louis J. Dinice, and Timpthy J. Sullivan, Case Number 93-528 (JCL).

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"For the last three weeks I have been delivering messages to the court about the upcoming motion to dismiss involving Louis J. Dinice, and the prior motion relating to his co-defendant.

"For example, I produced a two hundred page appendix on the matter involving both Dinice and Sullivan which material has just come available to me. I hand delivered this to the court on September 13, 1993, as I said I would on September 9, 1993 via telephone conversation with your chambers.

"On September 13, 1993 (the return date of the motion to dismiss) I arrived at 9:10 a.m. and once again attempted to go to your courtroom. The courtroom was locked, guarded by an intercom connected with a voice which delared, 'the judge is not here today. There will be no oral argument on the motion involving Louis Dinice. The other attorneys have not been notified. The motion will be decided on the papers.'

"My response to the foregoing was, attorneys by certified mail that I was requesting oral argument, I must have oral argument."

"Despite the foreging, oral argument was not forth-coming. I went to the Clerk' office on the same floor as Judge Lifland's courtroom and requested that my 200-page appendix be stamped received - I had delivered seven (copies) already to the court. The Clerk said he would not

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do so since those papers went directly to the judge considerng the motion. I rang the telpehone intercom to Judge Lifland's chambers and the anserer said they would not stamp the appendix received. They said go to the clerk....I went back to the clerk, and the clerk indicated he was not able to stamp the appendix received. I returned to the Judge's intercom and the answerer said go back to the clerk a third time.

"Clearly, no one took responsibility in this matter... In fact, the opinion of the court is dated September 13, 1993.

"This is the identical approach as occurred with the Sullivan motion to dismiss, and it is clear from reading the opinion of the court that material was omitted. I was advised to write to request oral argument. This constitutes my demand for reconsideration of both motions to dismiss along with consideration of material which I expect to receive momentarily.

"By copy of this letter, I am serving notice upon my adversaries that I seek oral argument in the above two motions to dismiss, and for the reasons set forth. Neither opposing party has answered interrogatories or deposition questions, so there is no issue of vexatious litigation involved. I need not address the practice of trying jury trials on the papers without the presence of the jury or of awardng legal costs on the same basis since there has been no trial upon which to base this interpretation, but

that is an issue as well."

The appendix above noted contains:
1. Answer to Municipal Water-Shut-off Complaint, Aug. 25, 1992, pp. 1-24

2. Transcript of Proceedings before Judge Dinice, Docket No. C-92-3016. Aug.-Dec.,1992. pp.25-142.

3. Brief in Support of Vacating ofJudgment due to Conflict of Interest of Ellen L. Koblitz, (an associate of Judge Sullivan), plus certification. June 17, 1993, pp. 143-200.

Koblitz supplied public defenders to petitioner's tenant, Stedtler, while she was incarcerated in the Bergen County jail. These pubic defenders represented Stedtler before Judge Sullivan. Inadequate representation was evident, and when Judge Dinice tried Stedtler on municipal charges stemming from the break-in at her apartment at 397 Park Street, Hackensack, three blocks from the municipal court and eight blocks from the county court house, Dinice tried the case (the prosecutor, Henry Amoroso, was defendant in the companion case, Moretti v. State of New Jersey, et al.D.C. 93-5577, C.A. C.A. No. 94-1474, Supreme Court Petition No. 94-1441. Note from point one of the argument the citing of the Code of Judicial Conduct. (Appendix p.148 et. seq.):

"During the period of (Stedtler's) incarceration plaintiff-within not only

was advised by the BCBSS (Bergen County Board of Social Services) that the incarceration was not unfavorable to them (they had placed the tenant at Park Court Apartments, and had terminated subsidy payments, without just cause). They failed to advise of any prior criminal record of the tenant, but had prevailed upon plaintiff within to offer testimony against the tenant in their behalf.

"It is clear that Koblitz knew or should have known of this conflict of interest when appearing as a judge transferred from her position with the government as Deputy with the public defender's office. Canon 3 of the Code of Judicial Office provides as follows.
Canon 3. A judge should perform the duties of judicial office impartially and diligently.

APPLICABILITY...
"The Code of Professional Responsibility for Lawyers has also been violated by Koblitz at RPC 1.11, which states as follows:

RPC 1.11 Successive Government and Private Employment....
"In the case sub judice, the judge was deeply involed in getting confidential information about the arrest at Park Court Apartments on May 1, 1993. (The tenant remains in jail as of June, 1995) Claims that after that extended period of time no privileged information existed biasing the (newly transferred from the public defender's office) judge with

respect to Park Court Apartments and its management is incredible. [Koblitz sanctioned petitioner $2,070.40 under the frivolous litigaiton statute for seeking payment from a tenant, Fields, who admittedly owed $3,000 back rent, found on behalf of the Hackensack Water Company for $6600, and awarded Ballard $650, despite the fact that Ballard was never a tenant but
sued to get her 'security' back]."

Petitioner also cited to Rules of Professional Conduct, 1.9, conflict of interest: former client, RPC 1.7 Conflict of Interest: General Rule, and RPC 1.10, imputed disqualifiation, General rule.

Note that when this appeal went to the Court of Appeals, petitioner filed a certification to stay imposition of sanctions, citing hardship. At page 12 of his January 20, 1994 certification, he stated, "I have not been able to hire a maintenance staff due to the on-site problems. This has resulted in my having to do all maintenance work onsite for the past five years, requiring in excess of 100 hours of work per week. Even contract labor cannot come to the property due to the demands made by the City of Hackensack and the County of Bergen through their officials. The inefficiency of having doctoral candidates do janitorial work is a jury question, but it has not been addressed by Judge John Lifland in the above cited opinions, for reasons which cannot readily be disclosed. Filing late papers due to snow removal and

emergency repairs is a continuing problem of this life style which results from allowing collegiate stype debates in the judicial forum. I expect that it will be shown to be a pervasive problem of opinions resulting from the briefs permitted by Patrick DeAlmeida (Sullivan) and Rovert Zimmerer (Dinice), neither of whom held evidential hearings disproving my statements."

Respondent Dinice claims that the issue of violations of the Canons of Judicial Conduct were not before the trial court or the Court of Appeals below. The foregoing material shows that they were. In addition, on March 17, 1994, petitioner filed with the U. S. Court of Appeals for the Third Circuit a twenty-four page brief, with copies to Robert Zimmerer (Dinice), and Patrick DeAlmeida (Sullivan), which address the violations specifically as to Dinice being both a judge and a practicing New Jersey lawyer with a Hackensack law office. At page three, petitioner cites to New Jersey Court Rule 1:15, Limitation of Practice of Attorneys, to wit that "an attorney who is a judge required to devote his full time to his judciial duties shall not practice law. Dinice received $49,000 per year as the Hackensack magistrate, plus additional salaries from South Hackensack and Little Ferry, resulting in over $60,000 annual judicial salary. In addition, he occupied a law office at 433 Essex Street, Hackensack. Point One squarely addresses this con-

flict at page 6 of the brief, which discusses constitutional violations in a municipality under 42 U.S. C. Section 1983 resulting from its failure to train municipal employees. At p. 8 the brief notes that [Dinice] has no obligation to act without using the information leaked to him from confidential sources. It is this problem of multpile hear-say which the judicial system strenuously obects to. Judicial immunity exists because the judge per se is self-correcting. The traditional protections of judicial office are missing when the judge acts as Dinice, full time judge and full time lawyer... [D]id [Dinice] act as a business-man who owns 433 Essex Street, and has a law degree? Clearly, the complaint maintains that the later was his motivation. This is the typical lawyer who acts in his best interests while owning and managing buildings in the city, his own and others who come before him in the municipal court. Consider that in the real world of high tenant turnovers, where Dinice tries to maneuver in to represent tenants (e.g. Beavers), he is clearly functioning outside his jurisdiction. He is in conflict when he shuts down the water at plaintiff-appellant's [petitioner's] apartment house, forcing Stedtler out of her apartment there, and then arrests her on a drug chage. He has concealed a breaking and entry, and instead turned it into a Big Apple (New York City) crime-caper." Point Two of the brief squarely addresses the issue of Judge Dinice operating outside the tradi-

tional role of a judge and thereby losing absolute immunity "because he is in violation of Canon 7 of the Code of Judicial Conduct: A Judge Should Refrain from Political Activity.

Quoting from p.19 of the brief, "Mr. Zimmerer represents that Judge Dinice has not violated the law, but if he has he is protected by absolute immunity...Acts such as described in the complaint when one is assaulted on the streets, or arrested without cause. Acts such as the issuance of warrants without probable cause come to mind when the Judge detailed men to occupy plaintiff's cellar lookng for "health" violations. What is this white powder here? Are there bugs living here? etc. This type of activiity is just what it appears to be - political activity. ...Given that the Special Civil Part of the Superior Court conducts eviction proceedings whereby tenants who without cause do not pay their rent are dispossessed, virtually the entire tenant popultion of plaintiff's [petitioner's] property were evicted. This constitutes the illegal practice of law under the Canons of the Judicial Code, wherein tenants are driven out of rentals, against their better judgment, and with out any relief. This is the invidious result of the failure of Judge Dinice to act within his jurisdiction."

On March 25, 1994, petitioner submitted to the Clerk of the United State District Court in Newark and to the Clerk of

the United States Court of Appeals in Philadelphia, a brief to stay the imposition of sanctions sought by Patrick DeAlmeida on hehalf of Sullivan, Petitioner argued that "judicial immunity prevails in trials, when judicial process exists. There was no trial, no pre-trial hearings; there was incarceration following search without probable cause. As such the investigatory stage was never completed. As such there is a problem whether there is a good-faith defense necessary for the shield of qualified immunity. For such immunity, the facts must be considered, but the trial court denied all hearings, thus the matter is foreclosed as far as the state is concerned."

In objection to the unreasonable and excessive sanctions imposed on behalf of both Judge Dinice and Sullivan, petitioner states at page 4 that "this case involves a real property whose assessment increasesd from $250,000 to $793,000, up $543,000 while the property was 80% vacant. This is excessive. Consider as well that residential tenancies require on-site management and maintenance staff, but both refused to work on-site due to the excessive police and fire presence, leaving ownership to work on site...The Beavers case exemplifies some of these aspects, a tenant who bounced numerous checks, resulting in jurisdiction shifting to Special Civil, but instead found-Judge Dinice willing to exceed his authority and state: "Don't pay your rent.

Let him sue, then subpoena a copy of this transcript. "This is excessive of the jurisdiction of the court.

Mr. Zimmerer (on behalf of Dinice) claims that petitioner has not alleged the sanctions imposes are excessive. Consider the hardship visited on other apartment houses on the block. The adjacent seventy-two unit building went through a bankruptcy sale after two mortgage re-castngs. Two condominium buildings suffered through two dozen sheriff sales at $100 per unit, a loss of over $1.2 million.

The common thread is lack of accountability. Consider petitioner's case pending in the New Jersey Appellate Division, Moretti v. City of Hackensack, Docket No. A-004913-94T2, wherein it was shown that when Hackensack considered water usage for assessment purposes it estimated an annual cost for water consumption at $971 per year. Upon petitioner paying $14,500 in the last nine months, he has received a shut-off notice due to insufficient payments on the water bill. Is it possible that suits appealing judicial decisions would be impossible given the losses of neighborhood buildings? Does housing suffer when judges ignore sociological facts and refuse to consider ecoonomic data such as offered in the case at bar?

## CONCLUSION

The defendants' clinging to absolute judicial immunity evidences their pre-twentieth century outlook. The competent administration ofthe Canons of Judicial Conduct on both federal and state levels proves that judges can be made accountable to the people. Professional housing management cannot survive judicial inadequacies which are long term and pervasive. Judges who try to manage apartment building on the basis of legal training alone neither provide long term solutions nor win political benefits. The exclusion of economic, sociological, and eyewitness accounts preserves the status quo and results in strategic process, not civil process.

Petitioner respectfully submits that the petition for certiorari be granted. This matter should proceed to merit briefs, with the consequent overturning of the lower court judgments.

Date: June 3, 1995

Respectfully submitted,

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